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THE PUBLIC HEALTH ACT, 1875.

See Supplement to this Work.
By Alex.r Macmorran. 1886.

Vide 3rd ed. 1887.

THE

PUBLIC HEALTH ACT, 1875,

ANNOTATED,

WITH AN APPENDIX,

CONTAINING

THE VARIOUS INCORPORATED STATUTES, &c.

BY

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SECOND EDITION,

WITH VERY EXTENSIVE ADDITIONS,

INCLUDING

ALL STATUTES RELATING TO PUBLIC HEALTH TO THE END OF THE SESSION 1884,

With Notes containing all Cases to date of Publication, Index, &c.,

BY

Wm. PATCHETT, Esq., Q.C.,

AND

ALEXANDER MACMORRAN, M.A.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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PREFACE TO THE SECOND EDITION.

IN the year 1858 the late Mr. LUMLEY, Q.C., published an Edition of the Public Health Act, 1848, and the Local Government Act, 1858. Before 1875, this Work, under the title of *Lumley's Sanitary Acts*, had passed through Three Editions, the Third Edition comprising the several Statutes in force relating to Public Health and Local Government. In 1875, after these Statutes had been consolidated into one Act, viz., the Public Health Act, 1875, the Work, of which the present volume is a Second Edition, was published. Though by its title it purported to be a new Work, it contained nearly all the original Notes in the earlier Work on the Sanitary Acts, of whcih it formed in substance a Fourth Edition; so that the present Edition in order of sequence would be a Fifth.

Of the Notes to the Act of 1875 many were of a practical character, and were justly regarded as authoritative by reason of Mr. LUMLEY'S official position as Counsel to the Local Government Board. These have been retained in the present Edition with very little alteration. The other Notes, however, which related to the construction of the Act, have been greatly enlarged. The Editors have endeavoured in so doing to make the Notes sufficiently full to obviate as far as possible the necessity of referring to the decisions cited; their object being to make the Work a manual for the use of members and officers of local authorities who have not always the means of reference. At the same time no pains have been spared to ensure completeness. Not

only have all the cases decided since 1875 been referred to under the sections to which they relate, but previous decisions not noticed in the First Edition have been cited, and the Editors believe that no cases of any importance have been omitted, even where they have been mentioned merely for the sake of pointing out that they are no longer of authority.

Since 1875, a number of Acts upon various matters connected with Public Health have been passed. These are collected in the present Edition, and appear in their places immediately after the principal Act. They relate to Water Supply, Cemeteries, Fruit-Pickers Lodgings, the support of Sewers and Sanitary Works, Epidemics, Bye-laws, and Contracts between Local Authorities and their Officers.

The Appendix to the First Edition did not profess to be complete. In this Edition the Editors have included not only the Statutes incorporated with the Public Health Acts, such as the Towns Improvement Clauses, Towns Police Clauses, Lands Clauses, Markets and Fairs Clauses, &c., but also the whole of the Statutes which, apart from the Public Health Acts, are to be executed by, or impose some duty or confer some power upon, urban and rural sanitary authorities, *e.g.*, the Acts relating to Public Libraries, Canal Boats, Artizans Dwellings, &c.

The Editors hope that they have thus been able to offer in One Volume a Manual of all the Statutes in any way affecting or relating to sanitary authorities and their duties. In order to keep the work within reasonable limits, the Notes to the Appendix will be found to be very brief when compared with those to the principal Acts. To this, however, the Editors have made some exceptions, for example, in the Notes to the more important sections of the Incorporated Acts. The Notes to the Rivers Pollution Act, 1876, are taken without much change from a separate Work on this Act by the late Mr. Lumley.

It was originally intended to include in the Appendix some of the principal official documents issued by the Local Government Board, such as Orders and Circular Letters. While the Work was in progress, however, a complete Manual of these was prepared by Mr. R. C. Glen, entitled *Glen's Local Government Orders,* and the Editors have therefore omitted from this work all the documents in question rather than make an incomplete selection from them.

It is only necessary to add that the Municipal Corporations (Corrupt Practices) Act, 1884, which applies to Elections of Local Boards and Improvement Commissioners, is included in the Appendix. It is printed out of the chronological order which the Editors have adopted as most convenient for purposes of reference, as the Act was not issued from the Queen's Printers until the rest of the Appendix was in type. It is desired also to call attention to the Addenda, the necessity for which has been obviated as far as possible, but which could not be avoided altogether. They consist almost entirely of references to decisions which have been published during the short period between the printing of the body of the Work and its publication. In one or two instances in which a recent decision was found to affect the correctness of any note as originally written, the necessary alterations were effected by cancelling and reprinting the passages affected.

W. P.
A. M.

Temple,
October, 1884.

ADDENDA.

[*The decisions in these Addenda only confirm the notes in the book. Where any recent decision has been found to affect any note as originally written, the alteration necessary has been made by reprinting the page*].

Page 10, section 4, after note (*a*) and reference to *Maude* v. *Baildon Local Board*, add, "See *Reg.* v. *Shiel*, 50 L. T. (N.S.) 590, and the decision of the Court of Appeal in *Portsmouth* (*Mayor of*) v. *Smith*, *post*, p. 154."

Page 22, section 9, note (*m*), after reference to 22 & 23 Vict. c. 49, s. 1, add, "In *Rhodes* v. *Pateley Union* (*Guardians of*), 48 J. P. 168, the meaning of the phrase, 'With due diligence prosecute,' was discussed."

Page 36, section 17, after reference to *Ewart* v. *Belfast Poor Law Guardians*, add, "The owner of a deep well was held entitled to discharge his sewage into it, and it was decided he was not liable to an action at the instance of the owner of a similar well situated in the neighbourhood, which became polluted by the sewage poured into the well first-mentioned: *Ballard* v. *Tomlinson*, 26 Ch. D. 194. This case was decided by PEARSON, J., but KAY, J., has since dissented from *Ballard* v. *Tomlinson*, in *Snow* v. *Whitehead*, W. N. 1884, p. 175."

Page 39, section 22, note (*c*), add, "An agreement whereby an owner of property is permitted under this section to drain his property into the sewers of an adjoining local authority is valid, and binds the successors of the local authority. It will not be set aside merely because it has become onerous by reason of the erection of new buildings on the property, whereby the flow of sewage into the sewers has been increased: *New Windsor* (*Mayor of*) v. *Stovell*, W. N. 1884, p. 187."

Page 65, section 55, note (*a*), after reference to *Milnes* v. *Mayor of Huddersfield*, add, "That the decision in that case has since been affirmed by the Court of Appeal: 50 L. T. (N.S.) 73; 48 J. P. 134."

Page 72, section 62, note (*i*), "A local authority caused a supply of water to be brought in main water-pipes along the street in which a house was situate, and gave notice to the owner of the house under this section to obtain a proper supply and do all such works as might be necessary for that purpose. The notice was not complied with, and the local authority did not exercise their power of executing the works necessary to connect the house with the main. In an action by the water company for water rates—held, that the defendant was liable, and that it was not a condition precedent to such liability that the works

necessary to bring the water into the house should have been executed: *Southend Waterworks Company* v. *Howard*, 13 Q. B. D. 215 ; 53 L. J. Q. B. 355 ; 48 J. P. 469."

Page 112, section 112, note (*c*), after reference to *Boyton* v. *Braintree Local Board*, add, "This decision has been since affirmed by the Queen's Bench Division: 48 J. P. 582."

Page 142, section 144, note (*e*), add, "The costs of an independent solicitor retained by the local board to take all the necessary steps for diverting three footways desired by a private person to be diverted are not expenses within the Highway Act, 1835, section 84, and a condition that the person desiring the diversion of a footway shall pay all costs and expenses of diverting the same, may give the local board a right to recover such costs by action, but not as expenses recoverable in a summary manner under section 101: *United Land Company* v. *Tottenham Local Board*, 53 L. J. M. C. 136."

Page 148, section 149, note (*d*), add, "But this vesting of the street in the local authority does not entitle them to obtain an injunction to restrain the carrying of telephone wires diagonally across a street at the level of the chimneys, the owners of the houses not objecting, and the wires causing neither nuisance nor appreciable danger, for they had only such a limited statutory property in the street, both with regard to depth below and height above the surface of the street as was necessary for the control of, and for the convenient and safe uses of the street, and there was therefore no infringement of their right: *Wandsworth District Board* v. *United Telephone Company, Limited*, 53 L. J. Q. B. 449."

Page 149, line 16, to end of note (*d*), add, "It has been decided that a rentcharge issuing from lands adjoining certain roads, and granted at a time when the roads were private occupation roads, in respect of the use of such roads, and the use of a sewer laid down in one of them, is not determined by the roads becoming highways repairable by the inhabitants at large, and the sewer becoming vested in and discontinued by the local authority ; and that it is immaterial that the grantor of the rentcharge had covenanted in the grant to keep the roads and sewer in repair: *Merrett* v. *Bridges*, 47 J. P. 775."

Page 151, section 149, note (*g*), add, "And see *Rotherham* (*Mayor of*) v. *Fullerton*, 50 L. T. (N.S.) 364."

Page 159, section 150, note (*f*), after reference to *Great Eastern Railway* v. *Hackney Board of Works*, add, "The appellant having a strip of land about 4 inches wide and 265 feet in length, abutting upon the north side of a new street, had erected a boundary fence upon the land, along its whole extent, under a covenant to erect and for ever after maintain a fence thereon made with his vendor, who was owner of the land adjoining the strip on the north side. Held that the appellant was owner of land abutting on the street: *Williams* v. *Wandsworth Board of Works*, 13 Q. B. D. 211 ; 32 W. R. 908 ; 48 J. P. 439."

Page 178, after reference to *Williams* v. *Powning*, add, "But in that case the question for the opinion of the court was whether the justices were justified in finding as matter of law that the street was a new street. In general the question whether a street is a new street is one of fact: see *Reg.* v. *Shiel*, 50 L. T. (N.S.) 590; *Portsmouth* (*Mayor of*) v. *Smith*, *ante*, p. 154, and the cases cited at p. 10, *ante*."

Page 184, section 159, add, after note, "It is always a question of fact for the justices before whom information is laid under the bye-laws whether a building is a new building or not: *James* v. *Wyvill*, 48 J. P. 228."

Page 187, section 161, note (*e*), add, "There being no statutory duty to light imposed upon the corporation, an action will not lie against them for damages sustained by reason of failure to light: *Mellor* v. *Heywood* (*Mayor of*) 48 J. P. 148."

Page 214, section 180, note (*o*), add, "When the submission has been made a rule of court in the Chancery Division an order to tax costs is not necessary: *Clark and the Corporation of Bath*, re *An Arbitration between*, W. N. 1884, p. 127. An award which is made a rule of court under this section cannot be enforced by motion like other awards. The proper procedure is to bring an action on the award. *Walker and Beckenham Local Board*, *In re*, 50 L. T. (N.S) 207; 48 J. P. 264."

Page 224, section 193, note (*c*), add, "It was held in *Todd* v. *Robinson*, 12 Q. B. D. 530, that under 22 Vict. c. 32, which enables the Crown to remit penalties on convicted offenders, there was no power to remit the penalty under this section."

Page 252, section 216, note (*i*), after reference to 24 & 25 Vict. c. 61, s. 9, add, "As to that section see *Reg.* v. *Nield*, W. N. 1871, p. 121."

Page 262, section 226, after reference to *Allum* v. *Dickinson*, add, "By an agreement of lease the tenant agreed to pay 'all rates, taxes and assessments payable in respect of the premises during the term.' Held that a sum assessed upon the owners as their proportion of the expense of paving a street in the metropolis in which the premises abutted, was not a rate, tax, or assessment within the meaning of the covenant, but a charge imposed upon the owner for the permanent improvement of his property (*Wilkinson* v. *Collyer*, 13 Q. B. D. 1; 32 W. R. 614); and a covenant in a lease whereby the landlord covenanted to pay all rates and taxes chargeable in respect of the demised premises, was held to extend to water rates paid by the lessee: *Direct Spanish Railway Telegraph Company* v. *Shepherd*, 13 Q. B. D. 202; 53 L. J. Q. B. 420; 48 J. P. 550."

Page 301, section 258, after reference to *Reg.* v. *Great Yarmouth JJ.*, add, "That a justice is not disqualified to act merely because he may have received a subpœna to attend and produce a document at the hearing of the matter: *Reg.* v. *Tooke*, 32 W. R. 753; 48 J. P. 276, 661."

Page 364, section 308, note (*e*), add, "See *Walker and Beckenham Local Board*, 50 L. T. (N.S.) 207; 48 J. P. 264."

Page 569, 10 Vict. c. 14, s. 13, note (*c*), after reference to *Goldsmid* v. *Great Eastern Railway Company*, 25 Ch. D. 511, add, "Since affirmed in House of Lords, W. N. 1884, p. 161."

Page 512, 8 Vict. c. 18, s. 24, add note, "A settlement by justices under this section of the compensation due to any person is not an order within 11 & 12 Vict. c. 43, s. 11, and need not be made within six months: *Re Edmundson*, 21 L. J. M. C. 193, overruled; *Reg.* v. *Edwards*, 53 L. J. M. C. 149."

Page 540, 8 Vict. c. 18, s. 121, note (*a*), after reference to *Reg.* v. *Hannay*, add, "Followed in *Reg.* v. *Edwards*, 53 L. J. M. C. 149."

Page 635, 10 & 11 Vict. c. 89, s. 28, note (*d*), add, "In *Gully* v. *Smith*, 12 Q. B. D. 121 ; 53 L. J. M. C. 35, it was held that in order to constitute a wilful obstruction within 5 & 6 Will. 4, c. 50, s. 72, there need not be an act of commission, but the offence may be complete by an omission on the part of the person whose duty it is to remove an obstruction after notice."

Page 665, note (*a*), after 40 & 41 Vict. c. 54, *post*, add, "And 47 & 48 Vict. c. 37, *post*."

Page 671, add note to 18 & 19 Vict. c. 70, s. 18, as follows: "Buildings may under this section be erected for public libraries, public museums, schools for science, art galleries, and schools for art, or for any one or more of these objects: 47 & 48 Vict. c. 37, s. 2, *post*."

Page 695, note (*d*), add reference to 47 & 48 Vict. c. 37, *post*.

Page 768, note (*a*), add reference to 47 & 48 Vict. c. 37 (the Public Libraries Act, 1884), *post*.

Page 919, 41 & 42 Vict. c. 77, s. 13, add note, "As to the meaning of the word *county* with reference to main roads in boroughs, see *Over Darwen* (*Mayor of*) v. *Lancashire JJ.* 48 J. P. 437."

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THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. CAP. 55.)

An Act for consolidating and amending the Acts relating to Public Health in England. [11th August, 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Preliminary.

1. This Act may be cited as The Public Health Act, 1875. Short title.

This Act is, for the most part a consolidation Act, repealing all previous statutes relating to the Public Health, and re-enacting them with certain amendments. The observations of BRETT, J., in *Reg.* v. *Prince*, L. R. 2 C. C. R. p. 160, with reference to the construing of the language used in consolidation statutes may be usefully referred to. Adverting to the use of several words or forms of expression applicable to statutory offences, he observes:—"They are but differences in form, and though they be all or though several of them be in one consolidating statute, they are not to be construed by contrast." Then he cites the following passage from *Greaves on the Criminal Law Consolidation Acts*, p. 3:—"If any question should arise in which any comparison may be instituted between different sections of any one or several of these Acts, it must be carefully borne in mind in what manner these Acts were framed. None of these was re-written, on the contrary each contains enactments taken from different Acts passed at different times, and with different views and frequently varying with one another in phraseology, and, for the reasons stated in the introduction, these enactments for the most part stand in these Acts with little or no variation in their phraseology, and consequently their differences in that respect will be found generally in these Acts. It follows, therefore, that any argument as to the intention of the legislature which may be drawn from difference in the terms of one clause from those in another, will be entitled to no weight in the construction of such clauses, for that argument can only apply with force where an Act is framed from beginning to end with one and the same view, and with the intention of making it thoroughly consistent throughout." The effect of this judgment is that the meaning of any particular phrase used in any particular section of a consolidating statute, is not to be bound or limited by the meaning of the same phrase in some other section, but is for the court with reference to the particular subject matter being dealt with in the particular section.

Sect. 2.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis.

Division of Act into parts.

3. This Act is divided into parts, as follows:

Part I.—Preliminary.
Part II.—Authorities for Execution of Act.
Part III.—Sanitary Provisions.
Part IV.—Local Government Provisions.
Part V.—General Provisions.
Part VI.—Rating and Borrowing Powers, &c.
Part VII.—Legal Proceedings.
Part VIII.—Alteration of Areas and Union of Districts.
Part IX.—Local Government Board.
Part X.—Miscellaneous and Temporary Provisions.
Part XI.—Saving Clauses and Repeal of Acts.

Besides these parts the Act contains five schedules in which most important provisions are set out, namely, the rules for the proceedings of local boards and committees, for the election of members of such boards, for the convening of meetings of owners and ratepayers, and the proceedings thereat, a supply of forms for numerous objects, and the repeal of previous Acts.

Definitions.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say,

In *Reg.* v. *JJ. of Cambridgeshire*, 7 A. & E. 491, Lord DENMAN, C.J., says:—"We apprehend that an interpretation clause is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of a word must be under all circumstances; we rather think that it declares what persons may be comprehended within that term when the circumstances require that they should." In the *Attorney-General* v. *The Corporation of Worcester*, 15 L. J. Ch. at p. 399, Lord COTTENHAM, C., said:—"The object of these Acts being framed with interpretation clauses, is by the means and through the agency of the interpretation clause to avoid the necessity of frequent repetition in describing all the subject matter to which the Act was intended to apply. It uses, therefore, an expression, and then, by the interpretation clause declares that that expression shall have certain meanings other than the ordinary meaning of the word used, and the way to apply that interpretation clause is, when you find the word used in other enactments, to follow the direction of the interpretation clause, and, according to the subject matter, to read it as if it contained the other words which by the interpretation clause it is meant to include. In *Lindsay* v. *Cundy*, 1 Q. B. D. at p. 358, BLACKBURN, J., said:—"The interpretation clause is a modern innovation, and frequently does a great deal of harm, because it gives a non-natural sense to words which are afterwards used in a natural sense without noticing the distinction." It ought therefore to be strictly construed. (*Allsop* v. *Day*, 7 H. & N. at p. 463, per POLLOCK, C.B.) In *The Midland Railway Company* v. *The Ambergate, &c., Railway Company*, 10 Hare, at p. 369, WOOD, V.C., said:—"With regard to all these interpretation clauses I understand them to define the meaning, supposing there is nothing else in the Act which is opposed to the particular interpretation." And in *Reg* v. *Pearse*, 5 Q. B. D. at p. 389, LUSH, J., said:—"An interpretation clause should be used for the purpose of interpreting words which are

Note to Sect. 4.

ambiguous or equivocal, and not so as to disturb the meaning of such as are plain." See also the observations of Lord CAMPBELL, C.J., in *Reg.* v. *The Burial Board of Sudbury*, E. B. & E. 265; of WILLES, J., in *Ablert* v. *Pritchard*, L. R. 1 C. P. 214; and of Lord ST. LEONARDS, in *The Dean of Ely* v. *Bliss*, 2 De G. M. & G. at p. 471.

It is right to notice the remark, per GIFFARD, L.J., in *Ex parte Morris*, L. R. 5 Ch. 174:—"General words will not be so construed as to destroy special exemptions or special privileges;" and see in *Thorpe* v. *Adams*, L. R. 6 C. P. 125; and in *The Earl of Derby* v. *Bury Commissioners*, L. R. 4 Ex. 222, how this proposition is well illustrated. Again in *Ebbs* v. *Boulnois*, L. R. 10 Ch. 484, JAMES, L.J., observes:—"It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments it must be seen if one cannot be read as a qualification of the other."

[See also on the same subject notes under the definition of "union" and "street" in this section, *post*, pp. 5, 9.]

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same:

These Acts have all been repealed and for the most part re-enacted by a consolidating and amending statute, the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50.

By sections 6 and 7 of the new Act, "borough" means, unless a contrary intention appears, every city and town to which the Municipal Corporations Act, 1835, applied at the commencement of that Act (*i.e.* 1st January, 1883), and to any town, district, or place, whereof the inhabitants are incorporated after the commencement of that Act, and whereto the provisions of the Municipal Corporation Acts are under that Act extended by charter, but to no other place.

"The Metropolis" means the city of London and all parishes and places mentioned in Schedules A, B, and C to the Metropolis Management Act, 1855:

18 & 19 Vict. c. 120. For a list of the parishes and places mentioned in the schedules to the Act, see *Woolrych's Metropolis Local Management Acts*, p. 145. By the express mention of the city of London, the definition of the metropolis contained in the previous Act is rendered more exact. It is to be observed that it does not extend to the *Metropolitan Police District*, as to the limits of which see 10 Geo. 4, c. 44, 2 & 3 Vict. c. 47, and amending Acts collected in 4 *Chitty's Statutes*, p. 1360.

"Local Government District" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted:

The Local Government Acts are defined in Schedule V. Part I. *post*, to be The Public Health Act, 1848; The Local Government Act, 1858; The Local Government Act (1858) Amendment Act, 1861; and the Local Government Amendment Act, 1863.

As to the constitution of local government districts in pursuance of this Act, see sections 271, 272, *post*.

Note to Sect. 4. The restricted meaning of the phrase "local board" should be noticed, as it is frequently used in a popular sense as synonymous with "local authority."

"Improvement Act district" means any area for the time being subject to the jurisdiction of any improvement commissioners as herein-after defined:

"Improvement Commissioners" means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating:

This definition is taken from 35 & 36 Vict. c. 79, s. 60, but the term town government occurred in 24 & 25 Vict. c. 61. It is not clear what the term implies here, as it is most appropriately applied to a municipal corporation. But 11 & 12 Vict. c. 63, s. 10, affords a reasonable explanation of the term as signifying "An Act for paving, lighting, cleansing, watching, regulating, supplying with water, or improving" any place when there is also a power of rating.

"Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

This definition is adopted from 29 & 30 Vict. c. 113, s. 18 (Poor Law Amendment Act, 1866). Overseers are and may be appointed for places or districts distinct from parishes.

Districts are often formed with reference to the boundaries of parishes. Some questions have arisen in regard to extra-parochial places, but these no longer exist, for by 20 Vict. c. 19, s. 1 (an Act to provide for the relief of the poor in extra-parochial places), after the 31st day of December, 1857, every place entered separately in the report of the Registrar-General on the last census which then was or was reputed to be extra-parochial, and wherein no rate was levied for the relief of the poor, is in future for all purposes of the assessment to the poor rate to be deemed a parish; and the justices having jurisdiction in such place are to appoint overseers therein. And by 31 & 32 Vict. c. 122, s. 27 (an Act to make further amendments in the laws for the relief of the poor), from the 25th day of December, 1868, every place which was or was reputed to be extra-parochial whether entered in the Registrar-General's report or not, for which no overseer had been appointed, or was then acting, or which had not then been annexed to and incorporated with an adjoining parish under 20 Vict. c. 19, s. 4, is for all civil parochial purposes to be annexed to and incorporated with the next adjoining parish with which it has the largest common boundary, and in case there should be two or more parishes with which it has boundaries of equal extent then with that parish which contained the lowest amount of rateable value.

The section last mentioned further provides that every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream, which on the 25th December, 1868, had not been included within the boundaries of or annexed to and incorporated with any parish, should for all civil parochial purposes be annexed to and incorporated with the parish to which such accretion, part or bank adjoins in proportion to the extent of the common boundary. It is presumed that this provision applies to districts constituted before the present Act was passed. In *The Blackpool Pier Company* v. *Fylde Union*, 46 L. J. M. C. 180; 36 L. T. (N.S.) 251; 41 J. P. 344, a pier was constructed of a wooden deck resting on iron piles driven into the sands, so that the water flowed under it, and no alteration was made in the line of low-water mark. It was held that the part of the pier beyond low-water mark, being beyond the

realm, was not extra-parochial within the meaning of this Act, and as such annexed to any other parish, nor was it an accretion from the sea. Note. to Sect 4.

When a parish extends up to a tidal river, but there is nothing to show whether it does or does not extend beyond the line of ordinary or medium high-water mark, land between such high-water and low-water mark cannot be assumed to be within the parish; and there is no distinction in this respect between land on the sea shore and land on the shore of a tidal river. *Duke of Bridgewater's Trustees* v. *The Surveyors of Highways of Bootle-cum-Linacre*, L. R. 2 Q. B. 4; 7 B. & S. 348; 36 L. J. Q. B. 41; 30 J. P. 725. See also *Reg.* v. *Musson*, 8 E. & B. 900; 22 J. P. 609; *McCannon* v. *Sinclair*, 2 E. & E. 53; 23 J. P. 757; *Ipswich Dock Commissioners* v. *St. Peter's, Ipswich*, 7 B. & S. 310; 30 J. P. 820.

"Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament (*a*), and includes (*b*) any parish (*c*) subject to the jurisdiction of a separate board of guardians:

"Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union (*d*):

(*a*) All unions which constitute rural sanitary districts have been formed under 4 & 5 Wm. 4, c. 76 (Poor Law). There are some few unions formed under special local Acts, but they constitute urban sanitary districts.

(*b*) In *Reg* v. *Kershaw*, 6 E. & B. 1,007; 26 L. J. M. C. 23; 20 J. P. 741, Erle, J., points out the distinction between the words *include* and *mean* in the same interpretation section, the former having an extending and the latter an excluding signification. Generally, however, an interpretation clause does not restrain the meaning of the words interpreted: *Doe* v. *Benham*, 7 Q. B. 979. See as to the meaning of the word "include," *Worsley* v. *South Devon Railway Company*, 16 Q. B. 539; *Ex parte Ferguson*, L. R. 6 Q. B. 280, 291, per Blackburn, J., 35 J. P. 468; *Jones* v. *Cook*, L. R. 6 Q. B. 505; 35 J. P. 403; *Pound* v. *The Plumstead Board of Works*, L. R. 7 Q. B., per Blackburn, J., at p. 194; 36 J. P. 468; *Nutter* v. *The Accrington Local Board*, 4 Q. B. D. 375; 43 J. P. 635.

(*c*) The parishes and places out of the metropolis under a separate board of guardians are Alston-with-Garrigill, East Stonehouse, Saddleworth, Stoke Damarell, Stoke-upon-Trent, Toxteth Park, and Whittlesea. But some of these are urban sanitary districts of themselves, or contain such within their area.

(*d*) This word also applies to a parish, see *ante*.

"Person" includes any body of persons, whether corporate or unincorporate:

In 11 & 12 Vict. c. 63, s. 2 (Public Health), this word was applied to corporations aggregate or sole. It is presumed that the latter are included here.

"Local authority" means urban sanitary authority and rural sanitary authority:

See section 5, *post*, p. 17.

"Surveyor" includes (*a*) any person appointed by a rural authority to perform any of the duties of surveyor under this Act (*b*):

(*a*) See, as to the meaning of this word, the note on the word "union," *supra*.
(*b*) This word is thus defined with reference to the rural sanitary authority,

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because such authority may not in many cases appoint a special officer as their surveyor under this Act. See section 190, *post*, as to the powers of a rural authority to appoint officers or servants.

"Lands" and "Premises" include messuages, buildings, lands, easements and hereditaments, of any tenure:

By 13 & 14 Vict. c. 21, s. 4 (an Act for the shortening of language used in Acts of Parliament), it is provided that in all Acts "land" shall include messuages, tenements and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure. It was intimated in *Oldacre* v. *Hunt*, 19 Beav. 492; 6 De G. M. & G. 390, that the word "land," as defined by section 2 of the Public Health Act, 1848, included a right of fishery. The Lords Justices did not give any express decision on this point; but it is to be observed that the definition in that section did not, as in the present Act, include the word *easement*, which is introduced into this definition as a new term. As to the effect of this, see section 15, note (*c*), p. 30, *post*.

The term *hereditaments* includes every kind of property that can be inherited. Hereditaments are either corporeal or incorporeal. The former are tangible and are practically the same as land; the latter are not tangible, but are the rights and profits annexed to or issuing out of land, as for example, tithes, rents, rights of common, &c.

A church was held not to be included in the term land in the Metropolis Management Amendment Act, 1862, 25 & 26 Vict. c. 102, s. 77. *Angell* v. *The Vestry of Paddington*, 9 B. & S. 496; L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742.

A railway in the metropolitan district was carried across a new street by an arch. On one side of the street the railway was carried forward on arches, and on that side was a strip of land ten feet wide left open for the purpose of repairing the arches; this abutted for ten feet on the street. On the other side the railway was carried forward on an embankment, and the sloping part or buttress of the embankment abutted on the street about 36 feet, and at the foot of the embankment was an open space also about 36 feet wide, also abutting on the street and left for the purpose of allowing of slips in the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land*. *Higgins* v. *Harding*, L. R. 8 Q. B. 7; 42 L. J. M. C. 31; 37 J. P. 677.

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent:

The use of the word *means* here appears to be restrictive and to imply that what follows is to be the only interpretation of the word *owner*, so that the owner of the fee simple who has let the lands upon a nominal ground rent is not within the definition. See *Evelyn* v. *Wychcord*, *Cook* v. *Montague*, *Candwell* v. *Hanson*, *Poplar Board of Works* v. *Lowe*, *post*, p. 7.

By section 2 of the Nuisances Removal Act, 1855, the word *owner* includes any person receiving the rents of the property in respect of which the word is used, from the occupier of such property, on his own account, or as trustee or agent for any other person, A. was lessee for 21 years, at a rackrent, of a house and shop; he occupied the shop himself, and underlet the upper part of the house to B. as a yearly tenant. The upper part was shut off from the house and A. had no access to it. There was a privy in the upper part of the house, which the nuisance authority took proceedings to abate, as a nuisance

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arising from a defective construction of a structural convenience; and they proceeded against C. who received the rent from A. as agent for A.'s landlord. Held that C. was not owner, as he did not receive the rent from B., who was the occupier of the premises on which the nuisances arose, and of which A. was the owner. *Cook* v. *Montague*, L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 37 J. P. 53. So where J. let to B. from year to year at a rack-rent, and B. let to weekly tenants, it was held that B., and not J., was the owner. *Bowen* v. *James*, 10 L. R. Ir. 26.

By section 250 of the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), owner is defined to mean the person for the time being receiving the rackrent of the lands or premises in connection with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent. The owner of houses abutting on a new street occupied the land under a building agreement, by which the owner of the land agreed to demise to the owner of the houses or his nominees the several pieces of land upon which he was to build, as the houses and buildings respectively became erected and covered, for 80 years, at the rent of a peppercorn for two years, and of sums increasing every year up to £364 in the sixth and following years. He was to be considered as holding the undemised portion on the terms of the leases. There was a power of re-entry upon non-completion of the building covenants. The houses at the date when the expenses which were the subject of the action were incurred, were in every stage of building progress, and some had been demised to other persons at defendant's nomination. Held that with the exception of the houses demised to other persons he was liable as owner of all the premises. Per BLACKBURN, J.: "He was in actual occupation, his peppercorn rent was to be raised to a ground rent. There could not be a reason for saying that the freeholder was receiving the rackrent. It may be a substantial rent, but not such as to prevent the defendant from being the owner." *Poplar Board of Works* v. *Lowe*, 29 L. T. (N.S.) 915. In *Lady Holland* v. *The Vestry of Kensington*, L. R. 2 C. P. 565; 36 L. J. M. C. 105; 31 J. P. 758, A., being owner in fee of certain land entered into a building agreement with B., whereby B. agreed to build certain houses on part of the land, and lay out the remainder as a garden for the exclusive use of the tenants of the houses, and A. agreed to grant to B. a lease of each house as it was built, and to grant him a lease of the garden with the last house; and it was expressly agreed that B. should have no interest in any house or land until a lease of it was granted. B. built some of the houses, but not all, and laid out the garden, and A. subsequently sold the reversions of the houses which were built to C. The parish in which the land was situated having paved a road running past the garden, claimed repayment of the expense from A. It was held that A. was the owner and therefore liable. Per WILLES, J.: "If the houses had been all built, and B. had obtained a lease of the garden, he would have been trustee for the inhabitants of the houses under the section. But at present A. is the legal owner, subject only to certain easements possessed by the inhabitants of the houses that have been built, and to the consideration that if and when certain acts are done she will be bound to grant the legal estate to B. It may be that she only holds as trustee for the inhabitants of the houses, but it is not only the beneficial owner, but the owner who holds as trustee for others that is liable to make payment under the Acts."

The Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 3, provides that the word *owner* shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement, other than as a tenant from year to year or for any less term, or as a tenant at will. It was held that an owner of land in fee simple, who lets it on a building lease at a peppercorn rent is not liable as owner, such a rent not being within the meaning of the section. *Evelyn* v. *Wychcord*, E. B. & E. 126; 27 L. J. M. C. 211; 22 J. P. 658. In *Cowen* v. *Phillips*, 33 Beav. 18, it was held that a tenant in possession, having

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an equitable interest only under an agreement for a lease for a term of three years, is in equity an owner under this section. In *Hunt* v. *Harris*, 34 L. J. C. P. 249, the lessee of a house for a long term of years who had underlet it in different portions to different tenants, and who was in receipt of the rents from such underlettings, was held to be the owner of the party-wall of such house within the meaning of the above section, notwithstanding that the underlettings created a greater interest in the undertenants than that of a yearly tenancy. In *Mourilyan* v. *Labalmondiere*, 1 E. & E. 533; 30 L. J. M. C. 95; 25 J. P. 340, the appellants were seised in fee of a building used as a chapel which they had let on lease for 21 years. It was held that they were not, but that the lessee was the owner within the meaning of the section. In *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 36 J. P. 470, the appellant who was seised in fee of certain building land, entered into an agreement with L. to grant building leases of 99 years of certain plots of the land, so soon as L. should have erected houses thereon at a peppercorn until June 24th, 1870, and afterwards at £28 a year. L. built houses which were roofed in about September, 1870, and it was held that he was the owner, and that it was immaterial whether his title were legal or equitable only. And see to the same effect *St. Helen's Corporation* v. *Riley*, 47 J. P. 471. In *Reg.* v. *Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22; 43 J. P. 302, it was held that the incumbent of a district church in the metropolis, although the freehold of the church was vested in him, was not the owner within the above section, as he neither received the rents and profits of the church nor was in occupation of it. As to the case where land is devised for a long term on trust to pay debts, &c., see *Mansell* v. *Norton*, 22 Ch. D. 769.

The trustee of a National school is an owner. *Bowditch* v. *The Wakefield Local Board*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 36 J. P. 197. The Ecclesiastical Commissioners in whom a church not built by them was vested, were held not to be the owners within the 25 & 26 Vict. c. 102. *Angell* v. *Vestry of Paddington*, *sup.* The owner of private roads adjoining land belonging to him was held to be an owner within the meaning of the same Act. *Pound and Lord Northbrook* v. *The Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 36 J. P. 468. But a land society who had set out and dedicated certain roads to the public, and sold off the building plots fronting them, were held by the Exchequer Chamber not to be owners of land within the same, a previous decision of the Court of Queen's Bench being reversed. *Plumstead Board of Works* v. *British Land Company*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; 39 J. P. 376. In that case Lord COLERIDGE, C.J., distinguished *Lord Northbrook* v. *The Plumstead Board of Works* (*sup.*) on the ground that Lord Northbrook had here "for his own purposes determinately reserved his property in the private roads to himself. He might at any time have put an end to the dedication of them to his own tenants, which was all he had ever done. There was no dedication of it to the public, and there was nothing done past recall." The same learned judge referring to *Angell* v. *The Vestry of Paddington* (*sup.*), indicates an opinion that when expenses are sought to be recovered under such Acts as the Public Health Acts from persons as owners of land, it is not enough that they should be owners of land or houses "for real property purposes," but they must be "the owners of land which could be let at a rackrent within the meaning of the statute."

The definition of *premises* avoids difficulties in the interpretation of the word, such as arose with reference to section 3 of the Factory Act, 1867, in *Kent* v. *Astley*, L. R. 5 Q. B. 19; 39 L. J. M. C. 3; and *Redgrave* v. *Lee*, 43 L. J. M. C. 105; L. R. 9 Q. B. 363.

"Rackrent" means rent which is not less than two-thirds of the full *net annual value* of the property out of which the rent arises (*a*); and the full *net annual value* shall be taken to be

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the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (*b*):

(*a*) See 4 & 5 Will. 4, c. 76, s. 109 (Poor).

(*b*) This definition is taken from the Parochial Assessment Act, 6 & 7 Wm. 4, c. 96, s. 1, and is what is set out in the column of the rate in the schedule headed *rateable value*. As to the meaning of the words "free from all usual tenant's rates and taxes," &c., see *Lumley's Union Assessment Committee Acts*, p. 20; *Lumley's Parochial Assessments*, p. 30; and *Hackett* v. *The Overseers of Long Bennington*, 9 L. T. (N.S.) 769; 16 C. B. (N.S.) 38; *Reg.* v. *Hall Dare*, 34 L. J. M. C. 17; 11 L. T. (N.S.) 301. In the last mentioned case, SHEE, J., explained the words "free from," as being equivalent to "without regard to," or "putting aside." The explanation of this definition is probably best given in the words of the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), s. 4, which declares that "gross value means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent. Rateable value means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid." From this it will be seen that the net annual value in the definition is the same as the rateable value as defined in the Metropolitan Act.

Tenant's rates and taxes means those which are borne by the occupier as distinguished from the owner of land, and include poor, highway, watering, watching, police, borough, board of health or district rates; but not land tax or property tax, which are landlord's rates or taxes. See *Lumley's Parochial Assessments*, p. 116, as to these rates and taxes and the mode of estimating them.

"Street" (*a*) *includes* any highway (not being a turnpike road) (*b*), and any public bridge (not being a county bridge) (*c*), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not (*d*):

(*a*) The definition of a street in the Metropolis Management Acts is almost identical with this. A space of ground from 33 to 58 feet wide between the footway and the carriageway, which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such uses to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be part of a street, having been only partially dedicated to the public. *Le Neve* v. *The Vestry of Mile End Old Town*, 27 L. J. Q. B. 208; 22 Jur. 660; 8 E. & B. 1054.

In *Galloway* v. *The Corporation of London*, 35 L. J. Ch. 493, Lord CHELMSFORD in his judgment states: "The word *street* does not mean the roadway but a thoroughfare with houses on each side." See to the same effect the judgment of JESSEL, M.R., in *Taylor* v. *The Corporation of Oldham*, 4 Ch. D. at p. 408.

In *Reg.* v. *Fullford*, 33 L. J. M. C. 122; 28 J. P. 357, on an indictment for bringing forward a house contrary to the Local Government Amendment Act,

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1861, section 28, it was held to be a question of fact for the jury whether certain houses formed a street; that in order to constitute a street there must be a row of houses sufficiently continuous and sufficiently proximate to one another, and that a set of detached houses not being in a continuous line, but some facing one way and some another, and having no appearance of uniformity, was not a street within the meaning of that section. The definition of the word street as used in the section, was contained in section 2 of the Public Health Act, 1848, and is practically identical with that in the above Act of 1875.

In *The London Chatham and Dover Railway Company* v. *The Corporation of London*, 19 L. T. (N.S.) 250, it was held by PAGE-WOOD, and SELWYN, L.JJ., that although the word street may include the houses abutting or fronting on a public thoroughfare, as well as the actual roadway or footways, yet the street in the *primâ facie* meaning of the word is confined to the roadway and footways. But in *Baker* v. *The Mayor of Portsmouth*, 3 Ex. D. p. 4, the court followed the dictum of Lord CHELMSFORD, in *Galloway* v. *The Corporation of London* (*sup.*) And in *Reg.* v. *Platts*, 28 W. R. 915, the facts of which are stated in a note to section 66 of the Towns Improvement Clauses Act, 1847, the court expressed an opinion that such an interpretation of the word street as is contained in the above definition is not imperative, that the word *street* means a line of houses and buildings and that it does not include a highway in the ordinary sense of that term merely because of the definition, unless the context requires it. See to the same effect under the Metropolis Management Acts, *Reg.* v. *The Vestry of Islington*, E. B. & E. 743; 22 J. P. 383. See also *Maude* v. *The Baildon Local Board*, 10 Q. B. D. 394; *Williams* v. *Powning*, 47 J. P. 486, and the cases cited under section 150, *post*.

An old highway which is a street within this definition, may become a street in the ordinary sense of the term when houses are built continuously along each side of it, for the interpretation section does not exclude the ordinary and popular sense of the words or expressions used. *Pound* v. *The Plumstead Board of Works*, L. R. 7 Q. B. 183; followed in *Dryden* v. *The Overseers of Putney*, 1 Ex. D. 223; *The Vestry of St. Mary, Islington*, v. *Barrett*, L. R. 9 Q. B. 279; *Robinson* v. *The Local Board for Barton*, 21 Ch. D. 621. And see as to what is a new street, the notes to section 157, *post*.

A *cul de sac* may be a street and public highway. *Souch* v. *East London Railway Company*, L. R. 16 Eq. 105; 42 L. J. Ch. 477. So also a highway, one end of which has been legally stopped: *Reg.* v. *Burney*, 39 J. P. 599. But a way ceases to be a public highway when the access to it at either end has become impossible by reason of the legal stopping up of ways leading to it. *Bailey* v. *Jamieson*, 1 C. P. D. 329.

When the justices found a road to be a street, the Court of Common Pleas refused to interfere with their decision, considering the question to be one of fact. *Newman* v. *Baker*, 8 C. B. (N.S.) 200. The question was also held to be one of fact in *Reg.* v. *Fullford*, *supra*, and in *Dodd* v. *The Vestry of St. Pancras*, 34 J. P. 517; *Bowles* v. *The Vestry of St. Mary, Islington*, 39 J. P. 757; *Maude* v. *The Baildon Local Board*; *Williams* v. *Powning*, *supra*.

(*b*) "A turnpike road is a road across which turnpike gates are erected and tolls taken . . . . A turnpike road is a road having toll-gates or bars on it . . . . The distinctive mark of a turnpike road is the right of turning back any one who refuses to pay toll." Per Lord ABINGER, C.B., in *The Northam Bridge and Roads Company* v. *The London and Southampton Railway Company*, 6 M. & W. at p. 438. A footpath by the side of a turnpike road is part of the road. *Loveridge* v. *Hodsoll*, 2 B. & Ad. 602. This definition does not exclude a street which is also a turnpike road from the operation of other sections referring to streets such as that vesting streets in local boards. *Nutter* v. *The Accrington Local Board*, 4 Q. B. D. 375 (per BRETT and COTTON, L.JJ., BRAMWELL, L.J., dissenting). "The interpretation clause is not restrictive. It does not say that the word *street* shall be confined to any highway not being a turnpike road, but that it shall 'apply to and include any highway not being a turnpike road,' &c. That is enlarging, not restricting

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the meaning of *street*; and in my opinion that which independently of the Act of Parliament in ordinary language is properly a street, does not cease to be so because it is part of a turnpike road." Per COTTON, L.J.

(*c*) See *Arnell* v. *Regents Canal Company*, 12 C. B. 697; 14 C. B. 564, as to how far a canal bridge was brought within the terms of a local paving Act. When a street passes over a canal by a bridge, the bridge may for some purposes be deemed to be a street. Per WIGHTMAN, J., in *Beaver* v. *The Mayor, &c., of Manchester*, 26 L. J. Q. B. 311.

A county bridge is one the duty of repairing which is cast by law on the inhabitants of the county at large. This duty extends to every public bridge erected before 1803, unless it is transferred to some persons or person or corporation by custom, prescription or tenure of land. Bridges built since 1803 are not repairable by the county unless they have been erected in compliance with the 43 Geo. 3, c. 59, s. 5, or have been declared to be so repairable pursuant to the 41 & 42 Vict. c. 77, s. 21.

(*d*) "The Act expressly calls places *streets* whether they are public property or private property, and whether the public have any rights over them, or have no rights over them." Per JESSEL, M.R., in *Taylor* v. *The Corporation of Oldham*, 4 Ch. D. at p. 407.

"House" *includes* schools, also factories and other buildings in which (more than twenty) persons are employed (at one time):

The words in brackets were repealed by 41 & 42 Vict. c. 16, s. 107, sched. 6 (Factory Act, 1878). How far this term is extended to any house remains for judicial decision.

There is no definition of a "house" here, but only an extension of the term. Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law, for illustration of the word "house." *Primâ facie* a house means a dwelling-house (*Surnam* v. *Darley*, 14 M. & W. 181); or a building calculated to be used as such (*Nunn* v. *Denton*, 8 Scott New Rep. 794; *Daniel* v. *Coulsting*, *ib.* 949); but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed.

A *church* was held not to be a house in *Angell* v. *The Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171. But this case had reference to the section of the Metropolis Management Act, 1862, which renders the owner of a house liable for the expenses of paving, &c. A church may be a house within the meaning of a bye-law or order prescribing a building line. Per MALINS, V.C., in *The Corporation of Folkestone* v. *Woodward*, L. R. 15 Eq. 159; 42 L. J. Ch. 782. A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts. *Caiger* v. *The Vestry of St. Mary, Islington*, 50 L. J. M. C. 59; 45 J. P. 570. The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses.

The word "house" under the Public Health Act, 1848, 11 & 12 Vict. c. 63, was held to apply to a toll-house on a turnpike road. *The Trustees of Tunstall Turnpike Roads* v. *Lowndes*, 20 J. P. 374.

In *Hole* v. *The Commissioners of Milton*, 31 J. P. 804, it was held that buildings and yards used for purposes of business, did not come within the description of "house" (for the purposes of a rate made under a Local Improvement Act), unless they were also within the curtilage of the house; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word house. Therefore a mill which opened into a yard adjoining a house, and which had internal communication with the outbuilding and house was held to be part of the house and properly included in the rate.

A public-house was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house

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only by a narrow foot pavement also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the public-house since 1802; it was used by customers of the public-house, and it furnished the only means of approach to vehicles to the front door of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the meaning of the Lands Clauses Act, section 92. *Marson* v. *The London Chatham and Dover Railway Company*, L. R. 6 Eq. 101, following *Lord Robert Grosvenor* v. *The Hampstead Junction Railway Company*, 1 De G. & J. 446.

In *Reg.* v. *JJ. of Warwickshire*, 17 L. T. (o.s.) 183, a coach-house and stables adjoining and occupied with a dwelling house, and forming part of the same premises, were held to be part of the "house" within the meaning of a local paving Act.

As to what constitutes a dwelling-house, see *Lawson* v. *Fraser*, 8 L. R. Ir. 55, where premises used as a corn store and kiln, part of which had formerly been used as a dwelling-house, and in which the respondent occasionally slept, were held to be a dwelling-house.

"Building" is a word of wider signification than "house." See per TURNER, L.J., in *Grosvenor* v. *The Hampstead Junction Railway Company*, *supra*.

In *Reg.* v. *Gregory*, 3 L. J. M. C. 25, an open shop roofed in, connecting the shop front with a newly-built house, was held to be a building within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway.

In *Stevens* v. *Gourlay*, 1 F. & F. 498; 29 L. J. C. P. 1; 1 L. T. (N.S.) 33; 7 C. B. (N.S.) 99, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry, and capable of being lifted from the ground, was held to be a *building* within 18 & 19 Vict. c. 122. In the *Poplar Board of Works* v. *Knight*, E. B. & E. 408; 28 L. J. M. C. 37; 5 Jur. (N.S.) 196, it was held that a house simply built on the surface of the ground without any foundations in the ordinary sense, was nevertheless a building within 18 & 19 Vict. c. 120, s. 204, which prohibited the erection of *buildings* over sewers. In *Morrish* v. *Harris*, L. R. 1 C. P. 155, a structure built of stone, having four walls and a door, which was used by the tenant for keeping guano and other manures which he used on adjoining land, was held to be a building within the Reform Act, 2 Wm. 4, c. 45, s. 27; but the term as used in that Act does not include everything which can be called a building; "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building." Per ERLE, C.J., in *Powell* v. *Boraston*, 34 L. J. C. P. 73. In *Watson* v. *Cotton*, 17 L. J. C. P. 68, decided with reference to the same Act, a shed described as standing against a wooden paling, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpauling which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building.

In *Bowes* v. *Low*, L. R. 9 Eq. 636, a vinery attached to a wall was held to be a building. Whether a high wall would be so, *quære*. It was considered by Lord HATHERLEY, in *Child* v. *Douglas*, Kay 560; 5 De G. M. & G. 739, that a dwarf wall forming a fence was not. See *Weston* v. *Arnold*, L. R. 8 Ch. 1,084, in reference to a party-wall. As to whether fence walls of a canal being erected in a public place constituted a *public building*, see *Arnell* v. *Regents Canal Company*, 12 C. B. 697; 14 C. B. 564.

A covenant in a purchase deed provided that buildings should not be erected beyond a given line of frontage. It was held that bay windows projecting beyond the line and carried from the foundation up to the roof were buildings within the meaning of the covenant. *Lord Manners* v. *Johnson*, 1 Ch. D. 673.

Temporary structures intended to be used for storing workmen's tools, and

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for the purpose of a brick kiln, were held not to be buildings within the meaning of bye-laws of a local board. *Fielding* v. *The Rhyl Improvement Commissioners*, 3 C. P. D. 272.

The word *building* is not restricted to erections above the surface of a street. Thus arches over which a roadway was made and which were used as storehouses, were held to be buildings within section 7 of the Gas Works Clauses Act, 1847. *Thompson* v. *The Sunderland Gas Company*, 25 W. R. 809; 24 D. 429

A "new building" is defined in section 159, *post*.

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed:

There may be instances of drains not comprehended within this definition, as where there is a direct communication from a house to a river or canal or the sea itself.

In *Coulton* v. *Ambler*, 13 M. & W. 403; 14 L. J. Ex. 10, a navigable river or cut was held not to be a "public or parish drain," within the meaning of a local drainage Act. The word *drain* was also held to include an underground drain when used in The Lands Drainage Act, 1847. *Bowes* v. *Watson*, 42 L. T. (N.S.) 27; 44 J. P. 364.

As to the word "means," see *ante*, p. 5.

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act: *Acton L.B. v. Batten,*

As to the word "includes," see *ante*, p. 5.

In *Sutton* v. *The Mayor of Norwich*, 31 L. T. (N.S.) 389, KINDERSLEY, V.C. observed:—"The word *sewer* comes from the word *to sew, i.e.* to drain, and has a much more extended signification than *drain*, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, &c. In the common sense of the term, it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit or to be converted into manure, or other useful purposes."

A marsh wall or embankment keeping back the River Thames from inundating the Isle of Dogs at high water, and through which sewers pass draining the island at low water, was held to be a sewer within the meaning of 18 & 19 Vict. c. 120. "Sewer in its common sense may mean the whole apparatus, and in its specific sense a drain as part of that apparatus." Per Lord CAMPBELL, C.J., in *The Poplar District Board of Works* v. *Knight*, 5 Jur. (N.S.) 196; 28 L. J. M. C. 37; E. B. & E. 408.

A stream supplied by the drainage, natural and artificial, of cultivated land, and receiving the drainage of two or three inhabited houses in its passage to the river into which it flows, is not a sewer within the meaning of the Public Health Act, 1848. *Reg.* v. *The Godmanchester Local Board*, L. R. 1 Q. B. 328; 35 L. J. Q. B. 125; 5 B. & S. 936; 14 L. T. (N.S.) 104.

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"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale:

By a clause in a Local Improvement Act, which closely followed the language of the Markets and Fairs Clauses Act, 10 & 11 Vict. c. 14, s. 19, it was enacted that "no person shall slaughter any cattle or dress any carcase for sale as human food, or food of man, in any place within the limits other than a slaughter-house." It was held that to slaughter cattle on the private premises of an inhabitant of the town, unless *for sale* as human food, was no offence within the clause. *Elias* v. *Nightingale*, 27 L. J. M. C. 151; 8 E. & B. 698.

"Water company" means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

This word is substituted for the words *water-works company* in the previous Acts.

"Waterworks" includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade (*a*) of any water company:

(*a*) These words must include everything not enumerated, but the enumeration appears to be exhaustive.

"Bakehouse Regulation Act" means 26 & 27 Vict. c. 40, (Bakehouse Regulation Act, 1863):

This Act was repealed by the Factory Act, 1878, 41 Vict. c. 16. The latter statute contained provisions which in effect took away the control of bakehouses from the local authorities and vested it in the factory inspectors. But the control of the local authorities over bakehouses has since been taken away from the inspectors and re-vested in the local authorities by the Factory and Workshop Act, 1883, 46 & 47 Vict. c. 53, which is set out in the Appendix. See also section 10 and the notes thereto, *post*, p. 23.

"Artizans and Labourers Dwellings Acts" means 31 & 32 Vict. c. 130 (Artizans and Labourers Dwellings Act, 1868):

With this Act must now be read 42 & 43 Vict. c. 64 (Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879).

In addition to these Acts there are others relating to Artizans and Labourers Dwellings. These are the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), amended by the 42 & 43 Vict. c. 63, and the 45 & 46 Vict. c. 54.

"Baths and Washhouses Acts" means 9 & 10 Vict. c. 74 (An Act to encourage the establishment of Public Baths and Washhouses); 10 & 11 Vict. c. 61 (An Act to amend the Act for the establishment of Public Baths and Washhouses):

With these must now be read 41 Vict. c. 14 (The Baths and Washhouses Act, 1878), and the 45 & 46 Vict. c. 30 (The Baths and Washhouses Act, 1882). **Note to Sect. 4.**

"Labouring Classes Lodging Houses Act" means 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867):

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act:

Schedule V. Part I. *post*, contains a list of repealed enactments, and has the following note appended to it: "Of the above Acts, the following (namely) 'The Public Health Act, 1848,' and 'The Local Government Act, 1858,' and 'The Local Government Act (1858) Amendment Act, 1861,' and 'The Local Government Act Amendment Act, 1863,' are in the Act referred to as '*The Local Government Acts*.'" This definition ought obviously to have been inserted in this section.

"Sanitary purposes" means any object or purposes of the Sanitary Acts:

"And of this Act" seeing that the object and purposes of the Sanitary Acts are the same as those of this Act.

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter (*a*) requiring the cognizance of general or quarter sessions arises:

(*a*) The words "or any part of the matter, as the case may be," in the 11 & 12 Vict. c. 63, s. 82, are omitted. Hence, though the district may be situated partly in the jurisdiction of one court of quarter sessions and partly in that of another, it is assumed that the matter in question will arise in one of them only. But if the matter does not arise in one of them only, both courts of quarter sessions would have jurisdiction, and consequently either. The meaning of the definition appears to be that the jurisdiction of a court of quarter sessions, over any matter arising within its local limits, is not to be affected by the fact that the sanitary district in which it arises is situate in part only within such limits. But it does not give to a court of quarter sessions jurisdiction over a matter not arising within its local limits, merely because the district in which the matter arises extends into such limits.

Section 269, *post*, provides that an appeal under this Act shall be to the quarter sessions for the county, &c. in which the *cause of appeal* has arisen. In rural districts, by virtue of section 9 of this Act, which incorporates the 30 & 31 Vict. c. 106, s. 27, justices have jurisdiction in *any* part of a union, and have jurisdiction over all matters arising in *other* parts of the union, though such last mentioned parts may extend into other jurisdictions. Hence when a union is situate in two counties, A. and B., and a matter arising in A. is heard before justices of B., the appeal would seem to be to the quarter sessions of B., that being the place when the *cause of appeal* has arisen. See *R.* v. *JJ. of Staffordshire*, L. R. 7 Q. B. 288; 41 L. J. M. C. 78.

"Court of summary jurisdiction" means any justice or justices of the peace, stipendiary or other magistrate or officer, by

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whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :

This is practically the same definition as that contained in the Summary Jurisdiction Act, 1879, section 50. In *Reg.* v. *Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49; 44 J. P. 248, it was held that the Summary Jurisdiction Acts regulated the procedure only in cases where justices were sitting and acting *judicially* as a Court of Summary Jurisdiction, and not in cases where their duties were ministerial only.

"Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same.

Tho only amending Act is the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49.

In addition to the definition given in the above section, several others are contained in the Act. See as to *Earth Closet*, section 37; *Dwelling*, section 74; *Common Lodging House*, section 89; *Nuisance Authority*, section 108; *Mortuary*, section 141; *Superintendent Constable*, section 171; *within the prescribed distance*, *ib.*; *General Expenses*, section 228; *Special Expenses*, *ib.*; *Riparian Authority*, section 287; *Port Sanitary Authority*, *ib.*; *Special Act*, section 316; *The Limits of the Special Act*, *ib.*; *The Promoters of the Undertaking*, *ib.*; *The Undertakers*, *ib.*; *Ratepayer*, Sched. III., No. 11; *The Local Government Acts*, Sched V., Part I.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

Constitution of Districts and Authorities.

Sect. 5. Urban and rural sanitary districts.

5. For the purposes of this Act England, except the Metropolis (*a*), shall (*b*) consist of districts to be called respectively—

(1.) Urban sanitary districts, and
(2.) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

(*a*) See the definition in section 4, *ante*, p. 3.
(*b*) Although this word imports futurity, that is not the operation of the section, seeing that these districts existed at the date of the Act, and all such districts as then constituted are continued by section 326, *post*.

Description of urban districts and urban authorities.

6. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

Urban District.	Urban authority.
Borough (*a*) constituted such either before or after *the passing of this Act.*	The Mayor, Aldermen, and Burgesses acting by the Council (*b*).
Improvement Act district (*c*) constituted such before *the passing of this Act* (*d*), and having no part of its area situated within a borough or local government district.	The Improvement Commissioners.
Local government district (*e*) constituted such either before or after *the passing of this Act* (*f*), and having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district (*g*).	The Local Board.

Sect. 6. Provided that—

(1.) Any *borough*, the whole of which is included in and forms part of a local government district or Improvement Act district, and *any Improvement Act district* which is included in and forms part of a local government district, and any *local government district* which is included in and forms part of an Improvement Act district, *shall* for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the *urban authority* therein; and

(2.) Where an *Improvement Act district* is coincident in area with a *local government district*, the improvement commissioners, and not a local board, shall be the *urban authority* therein (*i*); and

(3.) Where any part of an Improvement Act district is situated within a borough or local government district, or where any part of a local government district is situated within a borough, *the remaining part* (*k*) of such Improvement Act district or of such local government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs (*l*).

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the local government district of Oxford (*m*). So much of the borough of Folkestone as is not included within the local government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

(*a*) See the definition of *borough* in section 4, *ante*, p. 3.

(*b*) See section 198, and the notes to that section, *post*. Where a borough contained the whole or part of a place under improvement commissioners, it is nevertheless the urban sanitary district, and the town council is the urban sanitary authority for the whole, and this is also the case when the borough and Improvement Act districts are conterminous. A borough which comprises two or more local board districts is the urban sanitary authority for them all. They are merged in the greater area.

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(*c*) In section 4, *ante*, p. 4, will be seen the definition of *Improvement Act district* and *improvement commissioners*. There is no provision here with reference to the constitution of these commissioners as in 24 & 25 Vict. c. 61, s. 2. Hence life commissioners continue to be the urban sanitary authority, although they could not have been such if the commissioners had adopted the Local Government Act. See 24 & 25 Vict. c. 61, s. 2.

(*d*) These were the words used in 35 & 36 Vict. c. 75, s. 4, and of course referred to the date of that Act. These words would have extended the districts to such as were formed in the interval between that Act and the passing of this Act, but in fact none such were created during that period.

(*e*) See in section 4, *ante*, p. 3, the definition of a *local government district*.

(*f*) See note (*a*) above. As to how a local government district may be constituted after the passing of this Act, see section 271, *post*.

(*g*) A borough created hereafter, and a district in which this Act is adopted hereafter, will be constituted urban sanitary districts. As regards Improvement Act districts it would have been otherwise, but none are likely to be created.

(*h*) It is to be remembered that all these provisions have already taken effect.

(*i*) The case of a borough which was included in 35 & 36 Vict. c. 79, s. 4, prov. 2, is here omitted.

(*k*) It will be noticed that this proviso does not make any reference to the part which is *within* the borough. That became part of the urban sanitary district. As to local boards established before 1858, and comprising the whole or any part of a borough or boroughs, see Sched. II., art. 71. See also section 339, *post*.

(*l*) See section 270, *post*.

(*m*) The constitution of the district of Oxford, is provided for by section 342, *post*. The places named are either Improvement Act or Local Government Act districts, and therefore urban districts, or they are rural districts, peculiar in their character.

Incorporation of local boards and improvement commissioners.

7. Every local board (*a*), and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act), by such name as they *then* bear (*b*), and (in the case of local boards constituted after the passing of this Act) by such name (*c*) as they may with the sanction of the Local Government Board adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any license in mortmain for the purposes of this Act (*d*).

(*a*) It must be remembered that local boards and other local authorities were incorporated by 29 & 30 Vict. c. 90 (The Sanitary Act, 1866), s. 46. This clause therefore incorporates improvement commissioners who are urban sanitary authorities.

(*b*) Provision is contained in section 311, *post*, for the change of the name of the corporation.

It may be right to observe that "a parliamentary corporation is a corporation for the purposes only for which it has been established by parliament, and has no existence for any other purpose, and that whatsoever is done beyond the scope of such purpose is *ultra vires* and void:" per POLLOCK, C.B., in *The National Guaranteed Manure Company* v. *Donald*, 4 H. & N. 16. For further

Note to Sect. 7.

information as to the law on the subject the reader is referred to a treatise on the doctrine of *ultra vires* by Mr. *Seward Brice*.

(*c*) See section 311, *post*, as to the change of name by a local board.

(*d*) It must be noticed that there is no limit to the amount of lands to be held by these incorporated bodies if the lands be required for the purposes of the Act. When a license in mortmain is obtained there is usually such limit. The acquisition of lands for the purposes of the Act is provided for in section 176, *post*.

Election of local boards.

8. The members of local boards (*a*) shall be elective; and the number and qualification of members of local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in Schedule II. to this Act.

(*a*) The statute thus provides only for local boards, *i.e.*, boards elected for Local Government Act districts. The members of other urban sanitary boards are elected under the Municipal Corporations Act, 1882, or under their own local Acts, and it does not appear that in the latter case the provisions of this Act can be adopted as under 24 & 25 Vict. c. 61 (The Local Government Act (1858) Amendment Act, 1861), s. 2. But section 312, *post*, provides for the election of such commissioners as have heretofore adopted the provisions of the Local Government Acts. And see as to certain other local boards, section 339, and Sched II., art. 71, *post*.

Description of rural districts and rural authorities.

9. The area of any union (*a*) which is not coincident in area with an urban district, nor wholly included in an *urban district* (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any *urban district* (*b*), shall be a *rural district*, and the guardians of the union shall form the rural authority of such district (*c*): Provided that—

(1.) An *ex officio* guardian (*d*) resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an *urban district*, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the *owner* (*e*) or occupier of property situated in the rural district of a *value sufficient* (*f*) to qualify him as an elective guardian for the union:

(2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not *act or vote* (*g*) in any case in which guardians of such union *act or vote* as members of the rural authority:

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(3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district (*h*); but until *such order* (*i*) has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Where (*k*) the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise (*l*).

Subject to the provisions of this Act, all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which authority such act (*m*).

(*a*) See definition in section 4, *ante*, p. 5.

(*b*) See section 6. Though the greater part of the union may be comprised in urban districts, yet if all be not, that which remains of the union, though practically only the residue, is a rural district. But provision is contained in section 370, *post*, by which a rural district or part of it may be constituted an urban district.

(*c*) A misapprehension of the previous statutes is thus removed. The board of guardians of the union constitute the authority, though some members will be disqualified from acting in any matter relating to the rural district. The last words of the clause state this more emphatically. It must be here remarked that though the language is future, there is no new creation of these districts, inasmuch as all are already ascertained.

(*d*) Every justice of the peace residing in any parish or in any extra-parochial place, the boundary line of which or the greater part of the boundary line of which is included within or coincident with the boundary line of such union, and acting for the county, riding or division in which the same may be situated, is an *ex officio* guardian, and is entitled to act as a member of the board in addition to and in like manner as the elected guardians. (4 & 5 Wm. 4, c. 76, s. 38, amended by 7 & 8 Vict. c. 101, s. 24).

(*e*) He need not be rated for this property. As to the term *owner* reference may be made to the definition in section 4, *ante*, p. 6, or to that in Sched. II., art. 10, *post*, and to 4 & 5 Wm. 4, c. 76, s. 109.

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(*f*) That is "rateable value;" see 30 & 31 Vict. c. 106, s. 4. For the amount, refer to the order declaring the union. (4 & 5 Wm. 4, c. 76, s. 38.)

(*g*) The mere presence of any such guardian at the meeting does not, it is presumed, vitiate their proceedings.

(*h*) This provision supersedes 7 & 8 Vict. c. 101, s. 19, which requires a certain area for each ward.

(*i*) That is an order under this Act, as reference is not made to 7 & 8 Vict. c. 101.

(*k*) This is a new provision which meets defaults which have occurred in some few unions, and may occur hereafter, when urban districts are formed out of unions.

(*l*) No application is required from any one, but the Local Government Board will probably not act *ex mero motu*. No time is prescribed for the service of these nominees. It is to be presumed that they must cease to act when they cease to be qualified. Apparently the Local Government Board can make the appointment for life or for a limited term of years.

(*m*) This clause contains a very important provision, as it has the effect of incorporating several very important statutes applicable to guardians. Of these the following may be mentioned as the most important in practice:

22 & 23 Vict. c. 49, s. 1, provides that, "with respect to any debt, claim or demand which may after the passing of this Act, be lawfully incurred by or become due from the guardians of any union or parish, such debt, claim or demand shall be paid within the half-year in which the same shall have been incurred or become due, or within three months after the expiration of such half-year, but not afterwards, the commencement of such half-year to be reckoned from the time when the last half-year's account shall or ought to have been closed according to the order of the Poor Law Commissioners or Poor Law Board (now the Local Government Board, 34 & 35 Vict. c. 70): Provided that the Poor Law Board, by their order, may if they see fit extend the time within which such payment shall be made for a period not exceeding twelve months after the date of such debt, claim or demand." Section 4 provides that, "if any person claiming any debt or demand, shall have commenced, or shall hereafter commence proceedings in any court of law or equity, or before any justice or other competent authority, within the time hereinbefore limited, or within the time to which the Poor Law Board may grant extension, and shall with due diligence prosecute such proceedings to judgment or other final settlement of the question, such judgment shall be satisfied by the guardians against whom or against whose officer the same may be brought, notwithstanding that such judgment may be recovered or such final settlement arrived at after the expiration of the period hereinbefore provided, and all proceedings taken by way of *mandamus* or otherwise for the enforcing of such judgment without delay, shall be deemed to be within the operation of this section."

By 30 & 31 Vict. c. 106, s. 27, "where a union extends into several distinct jurisdictions, every matter, act, charge or complaint, by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union." See as to the construction and application of this section, *Reg.* v. *JJ. of Staffordshire*, L. R. 7 Q. B. 288; 41 L. J. M. C. 78; 36 J. P. 679; *Reg.* v. *Eaton*, 8 Q. B. D. 158; 51 L. J. M. C. 31; 46 L. T. (N.S.) 663; 30 W. R. 335; 46 J. P. 231.

Powers and duties of urban authorities.

10. In addition to the powers, rights, duties, capacities, liabilities and obligations exerciseable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of *any other authority* (*a*) which may have previously

exercised or been subject to the same) have exercise and be subject to all the powers, rights, duties, capacities, liabilities and obligations within such district exerciseable or attaching by and to the local authority under the Bakehouse Regulation Act (*b*), and the Artizans and Labourers Dwellings Act (*c*), or any Acts amending the same.

Where the Baths and Washhouses Acts (*c*) and the Labouring Classes Lodging Houses Acts (*d*), or any of them, are in force within the district of any urban authority, such authority shall have all powers, rights, duties, capacities, liabilities and obligations in relation to such Acts exerciseable by or attaching to the Council Incorporated Commissioners, Local Board Improvement Commissioners, and other commissioners or persons acting in the execution of the said Acts or any of them.

Where the Baths and Washhouses Acts are not in force within the district of any urban authority, such authority may *adopt* such Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may *adopt* such Acts.

Where any *local Act* other than an Act for the *conservancy of any river* (*e*) is in force within the district of an urban authority, conferring on any commissioners, trustees, or other persons powers *for purposes* the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers, rights, duties, capacities, liabilities and obligations of such commissioners, trustees, or other persons in relation to such purposes shall be transferred and attach to the said urban authority (*f*).

(*a*) This clause is in terms less extensive than 35 & 36 Vict. c. 79 (The Public Health Act, 1872), s. 7, and only refers to the particular Act mentioned. The statute in its different parts enables the urban authority to execute the powers thereby confided to them. But the Act of 1872 vested all the powers and liabilities of the sanitary Acts in the urban sanitary authorities, and the 326th section of this Act gives in substitution for such powers and liabilities now repealed the powers and liabilities specified in this Act. The subsequent proviso provides for powers contained in local Acts.

(*b*) As already stated in the note to section 4, *ante*, p. 14, this Act is repealed by 41 Vict. c. 16 (The Factory Act, 1878), s. 107. But by the Factory and Workshop Act, 1883, s. 17, as respects every retail bakehouse, the provisions of that Act and of sections 3, 33, 34, and 35 of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of the section the medical officer of health is to have the same powers of entry, inspection, &c. as an inspector under the Factory Act. By section 18, a *retail bakehouse* is

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defined to mean any bake-house or place, the bread, biscuits, or confectionery baked in which are not sold wholesale, but by retail in some shop or place occupied together with such bake-house. The control over bake-houses, which was taken away from sanitary authorities by the Act of 1878, is therefore restored to them by the Act of 1883, as far as retail bake-houses are concerned. But bake-houses which are not *retail* as defined by the Act are not under the control of local authorities. These remain subject to the provisions of the Act of 1878, and are under the control of the inspectors appointed under that Act. Section 4 of that Act provides, however, that where it appears to an inspector that any act, neglect, or default in relation to any drain, water-closet, earth-closet, privy, ashpit, water supply, nuisance, or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under that Act, he is to give notice thereof to the sanitary authority of the district, and the sanitary authority are to make inquiry and take action if they think proper. Section 38, *post*, p. 51, contains provisions which enable the local authority to compel owners or occupiers of factories and workshops to provide proper privy accommodation and is not affected by the Acts of 1878 or 1883, and is, therefore, in force as respects bake-houses. The provisions of the Factory Acts, the effect of which has been here stated, so far as they are material for the present purpose, will be found set out in full in the Appendix.

(*c*) See thedefinition of these Acts in section 4, *ante*, p. 14.

(*d*) These are 14 & 15 Vict. c. 34, (partly repealed by the Statute Law Revision Act, 1875); 29 & 30 Vict. c. 28, and 30 & 31 Vict. c. 28. See the Appendix of Statutes, *post*, for the principal provisions of these Acts.

(*e*) There is no definition of these words, but they are explained in section 327, sub-section (3), and they occur again in section 303.

(*f*) See section 322, *post*, as to a particular case. It may be well to refer to 20 & 21 Vict. c. 50, s. 2, though it was almost wholly superseded by 35 & 36 Vict. c. 75, s. 7, as interpreted by 37 & 38 Vict. c. 89, s. 3, and now by the above section. It enabled trustees under any Act for lighting, paving, &c., any borough, to transfer their powers to the borough corporation, and by the interpretation clause "trustees" means "trustees so charged with the execution of a public trust or duty." It was held, however, that a local board are not trustees within the meaning of this definition, and cannot transfer their powers to a borough corporation; and where the district of the local board and the corporation were not identical, that of the former being more extensive, 21 & 22 Vict. c. 98, s. 26, did not justify such a transfer. *Swinford* v. *Keble*, L. R. 1 Q. B. 549; 35 L. J. Q. B. 155; 7 B. & S. 873; 14 L. T. (N.S.) 770.

Moreover section 270, sub-section (2), *post*, enables the Local Government Board to deal with any powers which may be remaining in any improvement commissioners, and to vest them in the town council of the borough.

The case of an improvement district becoming a borough is provided for by section 310, *post*.

Powers and duties of rural authorities.

11. In addition to the powers, rights, duties, capacities, liabilities and obligations exerciseable by or attaching to a rural authority *under this Act*, every *rural* authority shall, within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities and obligations

within such district exerciseable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same. Sect. 11.

Upon the passing of the Factory and Workshop Act, 1878, this section was practically repealed; for the Bakehouse Regulation Act was repealed by that Act. It has been pointed out, however, in note (*b*) to section 10, *ante*, p. 22, that the control of local authorities over bake-houses has been partially restored by the Factory Act, 1883. See the note, and see also the provisions of the Factory Acts in the Appendix.

Vesting of property in local authorities.

12. From (*a*) and after the passing of this Act all such property real and personal, including all interests, rights and easements, in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any borough, or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians as the local authority of their district under this Act, subject to all debts, liabilities and obligations affecting the same property.

All debts, liabilities and obligations incurred by any authority whose powers, rights, duties, liabilities, capacities and obligations are under this Act exerciseable by or attached to a local authority, may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same (*b*).

(*a*) It must be remembered that by virtue of 35 & 36 Vict. c. 79, s. 9, the property referred to had been transferred, and such of it as still remains the property of the authorities mentioned, is therefore continued to be vested in them. But that clause only transferred to the sanitary authorities property applicable to the sanitary purposes thereby placed under the management of those authorities. Thus if a borough included in a local Act district, had been absorbed in an Improvement Act district, all the property of the town council did not pass, but only so much as related to the sanitary purposes. So, in the case of a parish which was a sewer authority, all the property of the parish did not pass, but only what belonged to the parish in connection with the sewers.

(*b*) The urban or rural authority have the same legal answers to claims that the former authority had, and such others as would be open to them in claims of a like character against themselves, such as the statute of limitations.

With regard to the liability of a local board in respect of a decree made against their predecessors, reference may be made to *The Attorney-General* v. *The Corporation of Birmingham*, 15 Ch. D. 423; 43 L. T. (N.S.) 77; 29 W. R. 127. In that case a decree was made in 1875 against the corporation of Birmingham as the sanitary authority of Birmingham, granting a perpetual

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injunction to restrain them from allowing sewage to flow into a river, the injunction being suspended for five years to give the borough an opportunity to execute certain works. At the expiration of that period the plaintiffs desired to enforce the injunction, but in the meantime the Birmingham Tame and Rea District Drainage Board had succeeded to the rights and liabilities of the Corporation of Birmingham in respect of the sewage. It was held that the new board could not then be made parties to the original action. Thereupon an action was commenced against the new board, the plaintiffs claiming a declaration that they were entitled to the same benefit of the decree as against the defendants, as if they had been defendants in the former suit. It was held that the new board were not made by the Public Health Act subject to any liabilities of their predecessors except those attaching under the Act, and were therefore not bound by a decree against them, and that, there being no allegation of any nuisance committed by the new board, the plaintiffs had no cause of action. *The Attorney-General* v. *The Birmingham Tame and Rea Drainage Board*, 17 Ch. D. 685; 50 L. J. Ch. 786; 44 L. T. (N.S.) 906; 29 W. R. 793.

PART III.

SANITARY PROVISIONS.

Sewerage and Drainage.

Regulations as to Sewers and Drains (*a*).

Sect. 13. Sewers vested in local authority.

13. All existing and future sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto,

Except

(1.) Sewers made by any person (*b*) for his own profit, or by any company for the profit of the shareholders (*c*); and

(2.) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (*d*); and

(3.) Sewers under the authority of any commissioners of sewers appointed by the Crown (*e*),

shall vest in (*f*) and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred (*g*).

(*a*) Note in section 4, *ante*, p. 13, the distinction between *sewers* and *drains*. A natural stream, supplied by natural and artificial drainage of cultivated soil, belonging to private individuals, was cleared out and partially widened and deepened by commissioners acting under a private Inclosure Act, powers being given to them to do so at the expense of the proprietors. In its passage to a public river, it passed through a town and received the drainage of a few inhabited houses. It was held that, assuming it to be a *sewer*, which was very doubtful, it came within the exceptions in this section (sub-section 2), and was not vested in the local board of health, so that they were not liable to cleanse and repair it. *Reg.* v. *The Local Board of Godmanchester*, L. R. 1 Q. B. 328; 11 Jur. 63; 5 B. & S. 886, 936; 14 L. T. (N.S.) 104; 35 L. J. Q. B. 125.

A tidal fleet or watercourse in which barges were floated alongside premises in the town of Lynn, was held not to be a sewer merely because sewage was discharged into it, and the local authority were therefore restrained from arching it over as a sewer vested in them. *Pentney* v. *Lynn Paving Commissioners*, 12 L. T. (N.S.) 818.

(*f*) Bonella v. T. L. B. of H. 18 Q. B. D. 577; 56 L. J. M. C. 73.

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(*b*) This word, according to the definition in section 4, *ante*, p. 5, includes a corporation aggregate. It appears also to apply to a corporation sole. The term *his own profit* would, it is presumed, include a case where there may be no actual profit to the maker, but when he contemplated profit to himself or to his successor in title. A sewer made by a landowner for the benefit of his estate, and not dedicated by him to the public, would be one for his profit as it is presumed. The term also includes joint owners, as the singular number includes the plural when that construction is required.

(*c*) The word *proprietors*, which existed in 11 & 12 Vict. c. 63, s. 43, and was somewhat indistinct in its signification, is here omitted.

(*d*) This purpose is not limited to irrigation under local or private Acts.

For an example of a sewer which falls within this exception, see *Reg.* v. *Local Board of Godmanchester*, *sup.*, note (*a*).

(*e*) See further the saving contained in section 327, *post*.

(*f*) On these words in a private Act, JESSEL, M.R., said:—"This is not the case of a mere easement. The barrel of the sewer—that portion of the subsoil—vests in you (the local authority) under the section." "It was found under the old law, and it was sometimes held, that the sewer authorities (they were not called sewer authorities in those days), had only an easement, and it was found to be very inconvenient, and consequently in the modern Acts the property in the sewers has been vested in the sewer authorities. That is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement or right of sewerage or drainage, the absolute property in the sewer (which means not only the brick barrel or whatever it may be forming the sewer, but the whole interior of the sewer, that is the whole of the space occupied by it), is now vested in the sewer authorities. And if the sewer is a large one, it amounts in substance to the whole of the subsoil, and that is absolutely vested in the corporation." Per JESSEL, M.R., in *Taylor* v. *The Corporation of Oldham*, 4 Ch. D., at pp. 402, 411. See also as to the meaning of the words *vest in*, *Coverdale* v. *Charlton*, 4 Q. B. D. 104; *Rolls* v. *St. Georges, Southwark*, 14 Ch. D. 785; and the cases cited upon the same words in the notes to section 149, *post*. And see the judgment of JESSEL, M.R., in *The Attorney-General* v. *The Guardians of Dorking*, 20 Ch. D. at p. 604.

(*g*) This is a new provision rendered necessary to meet the action of local authorities in their neighbouring districts, under sections 28 and 285, as well as the cases of special private Acts which provide for the sewerage of extensive districts.

It will be observed that this provision applies both to sewers already constructed at the time of the passing of the Act, and to sewers which may hereafter be constructed in the district of a local authority by any other authority.

Power to purchase sewers.

14. Any local authority may purchase *or otherwise acquire* (*a*) from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings, works, materials or things, belonging thereto), within their district, and any person may sell or grant to such authority any such sewer right, or property belonging to him; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right, or property sold was subject to.

But any person who, previously to the purchase of a sewer by such authority, has acquired a *right* (*b*) to use such sewer shall be

entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made. Sect. 14.

(*a*) These words are new, and enable the local authority to accept a gift of a sewer, as, for instance, where it was made for private profit but the landowner gives it to the local authority.

(*b*) There is no limit to the extent of this right. 11 & 12 Vict. c. 63, s. 44, applied only where a *perpetual right* had been acquired.

15. Every (*a*) local authority shall keep in repair (*b*) all sewers belonging to them, and shall cause to be made (*c*) such sewers as may be necessary for effectually draining their district for the purposes of this Act. Maintenance and making of sewers.

(*a*) This section imposes duties upon the local authority, *i.e.*, upon both urban and rural authorities, and the neglect of these duties will be a default within the operation of section 299, *post*. This duty may be enforced by *mandamus*, but before applying for the writ it is necessary that a formal demand should have been made and refused. *In re Maidenhead Local Board*, 26 L. T. (o.s.) 104. And see *Ex parte Parsons*, 22 J. P. 68.

(*b*) Upon the corresponding enactment in 18 & 19 Vict. c. 121, s. 22, the Court of Queen's Bench held that the requisition of repair did not mean the reconstruction of a sewer originally imperfectly made, but the keeping of a sewer in proper repair. Hence, where a board of guardians were required by *mandamus* to put a sewer within their district into good and serviceable repair, it was held to be a good return that the sewer was defectively made and could not be repaired, or if repaired would create a nuisance. But reasonable improvements would be within the emergency of the writ. *Reg.* v. *Epsom Union*, 8 L. T. (N.S.) 383; 11 W. R. 593.

The local authority are liable for damage done by the bursting of a sewer caused by defects in its original construction, and by their omission to take reasonable means to discover such defects; as they are under a legal duty to repair the sewer, and ought from time to time to inform themselves of its condition. *Fleming* v. *The Corporation of Manchester*, 44 L. T. (N.S.) 517; 45 J. P. 423.

A water company under this statute laid a water pipe under a turnpike road, the soil of which was in K., the owner of the adjoining land. C. was employed by K. to make a tunnel under the road with consent of the road trustees, and in doing so was obstructed by water which had escaped from the pipe without anyone's knowledge. C. called upon the company to repair the pipe, which was done, but not until injury to the works had been suffered. It was held that C. had no action against the company in respect of injury to his contract with K., though K. might have had an action for injury to his land. *Cattle* v. *Stockton Waterworks Company*, 39 J. P. 791. This case may illustrate the corresponding liability of a local authority under the above section.

For other cases in which local authorities are liable in respect of the making and keeping of sewers, see the notes to section 19, *post*, p. 37, and the notes to section 265, *post*.

(*c*) As regards the action of the authority, it must be observed that this section will not enable them to brick or arch over a watercourse containing pure water, with a view to its afterwards carrying sewage, for the Act does not authorize the committing of a nuisance. *Attorney-General* v. *Hackney Local Board*, L. R. 20 Eq. 626; 44 L. J. Ch. 545. See also *Pentney* v *Lynn Paving Commissioners*, 12 L. T. (N.S.) 818. Nor may they construct a sewer which will cause a nuisance by its discharge. *Southampton and Itchin Bridge Company* v. *Southampton Local Board*, 8 E. & B. 801; 4 Jur. (N.S.) 1,298; 28 L. J. Q. B. 41.

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A local authority is liable in an action for damages caused by their negligence in making a sewer. Such injury does not merely give the person injured a claim for compensation under section 308, *post*, but also a right to damages. *Hall* v. *The Corporation of Batley*, 47 L. J. Q. B. 148; and see *post*, section 308.

A manhole is part of the sewer, and may be made without purchasing land for the purpose, the owner of the land being entitled only to compensation for the damages arising from making it. *Swanston* v. *Twickenham Local Board*, 11 Ch. D. 838. If what is done is equivalent to taking the land, the owner will be entitled to the full value of the land by way of compensation. He will also be entitled to be compensated in respect of the lateral support which the sewer may require. Per JESSEL, M.R., *Roderick* v. *Aston Local Board*, 5 Ch. D. 328. And it was held that he was entitled to compensation for being deprived of the free power to work subjacent mines, but not for the risk of percolation into subjacent mines. *R.* v. *The Corporation of Dudley*, 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. But see now the Public Health Act, 1875 (support of sewers), Amendment Act, 1883, *post*, which contains provisions for compensation to mine owners for the right of support to sanitary works.

If in making the sewer the board must actually take lands, still though they must make compensation they are not compelled to acquire the land before they execute their works. *North London Railway Company* v. *Metropolitan Board of Works*, 1 Johns. 405; 5 Jur. (N.S.) 1,121; 28 L. J. Ch. 909; *Hughes* v. *Metropolitan Board of Works*, 4 L. T. (N.S.) 318; 9 W. R. 517. Nor are they bound to proceed under the Lands Clauses Consolidation Acts. *Thornton* v. *Nutter*, 31 J. P. 419. The power of acquiring the land is provided in section 175, *post*.

Powers for making sewers.

16. Any local authority may carry any sewer through, across, or under any turnpike road, or any *street* (*a*) or place laid out as or intended for a street, or *under* (*aa*) any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing *to the owner or occupier* (*b*) (if on the report of the surveyor it appears necessary) (*c*), into, through or under (*d*) any lands whatsoever *within their district* (*e*).

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) (*f*), exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

(*a*) See the definition of this word in section 4, *ante*. A local authority were held entitled to lay a sewer in a private road. *Taylor* v. *The Corporation of Oldham*, 4 Ch. D. 395.

Notice the words "through, across or under." It is left to the discretion of the local authority whether they will carry the sewer above the turnpike road or under it, the Legislature assuming that they will carry it in such a manner as not to interfere with the traffic. Per JESSEL, M.R., in *Roderick* v. *The Aston Local Board, supra*, note (*c*). 5 Ch Div

(*aa*) Not "into, through, or across." *Roderick* v. *Aston Local Board, supra.*

(*b*) These words were wanting in 11 & 12 Vict. c. 63, s. 45, and it was left vague to whom the notice was to be given. Here it is provided that notice is to be given to the owner (see section 4 for this definition), or to the occupier. The interposition of these words has given some awkwardness to the parenthesis; but the report of the surveyor is not in relation to the notice. It refers to the necessity of passing through the lands. An injunction will be granted to restrain a local authority from constructing a sewer through private lands, on the ground that reasonable notice in writing has not been given, and that

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the surveyor has not reported the construction to be necessary as required by this section. *New River Company* v. *The Ware Union Rural Sanitary Authority*, L. J. Notes of Cases, 1883, p. 20.

As to the authentication of the notice, see sections 266, 267, *post*. A notice, specifying the object to be the construction of a sewer of certain dimensions, to enter at a certain spot and to go in an oblique direction from that spot without a map was held to be a reasonable one. *Cleckheaton I. S. H. Society* v. *Jackson*, 14 W. R. 950.

(*c*) In the case of the *Earl of Derby* v. *The Bury Commissioners*, L. R. 3 Ex. 121; L. R. 4 Ex. 225, the Court of Exchequer Chamber laid it down, that "the necessity for making a new sewer being ascertained as a matter of fact, it was for the local authority to exercise their judgment in what direction that new sewer should be made through the adjoining land, and so long as they exercise an honest discretion without misconduct or negligence, they are not liable to have their judgment overruled in a court of law."

(*d*) Under this section a local board proceeded to carry a sewer across the plaintiff's pleasure grounds, on such a level that the bottom of the sewer would be only slightly below the surface, and a permanent embankment about six feet high would be made. It was held by the Court of Appeal, affirming the judgment of JESSEL, M.R., that the board was authorized to do so, for that the Act did not confine them to carrying a sewer underground. *Roderick* v. *Aston Local Board*, 5 Ch. D. 328; 46 L. J. Ch. 402; 36 L. T. (N.S.) 328; 41 J. P. 516. A local authority would therefore apparently be entitled to carry their sewer across a highway. If an owner of land refuses to allow a local authority to enter his lands for the purpose of making a sewer under this section, it seems that section 305 of this Act does not enable the local authority to obtain from a court of summary jurisdiction an order authorizing such entry. Per COCKBURN, C.J., in *Lamacraft* v. *St. Thomas R. S. A.*, 42 L. T. (N.S.) 365; 44 J. P. 441.

A local authority are liable in an action for damages, and may be restrained by injunction from proceeding under this section if the proposed sewer would cause a nuisance (*ibid*).

(*e*) 11 & 12 Vict. c. 63, s. 45, did not contain these words. But notwithstanding the generality of the expression, it was held that the local board could not make sewers out of their district. *Haywood* v. *Lowndes*, 4 Drew. 454; 5 Jur. (N.S.) 185; 28 L. J. Ch. 400; 32 L. T. (N.S.) 366). This decision led to the passing of 24 & 25 Vict. c. 61, which contained the enactment in the next paragraph, and the provisions therein referred to, which are set out in sections 32-4, *post*, pp. 47—8.

It may be observed here that though the local board may make the sewer, they do not, as it seems from *The Metropolitan Board of Works* v. *The Metropolitan Railway Company*, L. R. 3 C. P. 612; 4 C. P. 192; 38 L. J. C. P. 192; 19 L. T. (N.S.) 744, acquire any right against the owners of adjoining lands to a lateral support. This therefore must be purchased if it is considered to be requisite. But this right is gained against the owner of the lands in which the sewer is laid, and this may be taken into account in estimating the compensation to which he is entitled. Per JESSEL, M.R., in *Roderick* v. *Aston Local Board* (*sup.*); and *re Dudley* (*sup.*). And see the Public Health (support of sewers) Act, 1883, referred to *ante*, p. 30, and set out *post*.

(*f*) See sections 32-4, *post*, pp. 47-8.

Sewage to be purified before being discharged into streams.

17. Nothing in this Act shall authorize any local authority to make or use any sewer, drain, or outfall, for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and

Sect. 17. quality of the water in such stream or watercourse, or in such canal pond, or lake.

This clause formed a proviso to 24 & 25 Vict. c. 61, s. 4, and illustrates the note to section 1 on p. 1, *ante*. The meaning is that if the sewage or filthy water be duly purified in the manner described, it may be discharged into the stream, canal, lake, or pond. It is difficult to find any authority in the Act which purported to enable the local authority to do otherwise. This clause is, therefore, an enabling and not a prohibitory one.

This is a convenient place for a more detailed statement of the liabilities of local authorities in exercising their powers of making sewers.

The Court of Error in the Exchequer Chamber held, upon words in the Metropolitan Local Management Act, 18 & 19 Vict. c. 120, similar to those in section 16, that a local board were not justified in carrying the sewage of their district by means of a new system of sewers into a stream running through private grounds and thereby polluting the water. The lands were in fact without the district, but the court held that this made no difference. *Cator* v. *The Board of Works for the Lewisham District*, 34 L. J. Q. B. 74; 5 B. & S. 115; 13 L. T. (N.S.) 212. And see *The Attorney-General* v. *Hackney Board of Works*, *ante*, p. 29, section 15, note (*c*).

It is necessary to enlarge further on this subject, because the subject is one which has led to a great amount of litigation, and the various decisions must be referred to. Local boards of health anxious for the public good, by their endeavours to extend their sewers and provide for their sewage, have in some cases infringed the private rights of individuals, who have applied to the courts of law for redress or interference. Thus in *Oldacre* v. *Hunt*, 1 Jur. (N.S.) 785; 6 De G. M. & G. 376; 19 Beav. 485, a local board of health proposed to carry a sewer through certain fields into the river Avon at a particular spot. The owners of those fields which adjoined the river had watering places therein; they had also a several fishery in the river, though they were not otherwise interested in the bed of it, and they had not given their consent to the works. The Master of the Rolls granted an injunction to prevent the Board of Health from proceeding with the sewer, and this injunction was confirmed by the Lords Justices on appeal, assisted by CRESSWELL and WILLIAMS, JJ. The opinion of the court was that the parties complaining were interested in the river by reason of their watering places, independently of their right to the fishery, which also appeared to the judges to be fairly included under the term *land*. See to the same effect *Bidder* v. *Croydon Local Board*, 6 L. T. (N.S.) 779. But with reference to the right to pollute streams gained by long user against individuals, see *Rigby* v. *The Mayor of Bristol*, 29 L. J. Ex. 359; *Goldsmid* v. *The Tunbridge Wells Commissioners*, L. R. 1 Eq. 169; 1 Ch. D. 352. In the case last mentioned the sewage of a town had for many years been drained by commissioners acting under a local Act into a stream passing through the plaintiff's land which was beyond their district, without perceptibly polluting it. But for some years before the filing of the bill, in consequence of the increase of the town, the stream became perceptibly polluted and continued to increase in impurity. The court granted an injunction. They held on the facts that no prescriptive right had been gained, but that assuming that such right could be acquired of draining the sewage into the stream to the injury of the plaintiff, it could only be acquired by the continuance of a perceptible amount of injury for twenty years. They further held that although the fact of prospective nuisance is not in itself a ground for the interference of the court, yet if some degree of present nuisance exists, the court will take into account its probable continuance and increase. In *The Attorney-General* v. *The Mayor and Corporation of Basingstoke*, 24 W. R. 817, a drain had been constructed to carry surface water into a canal with the consent of the owners of the canal. This drain was subsequently converted into a sewer, and the Attorney-General and the owner of the canal filed an information and bill against the defendants,

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to restrain them from permitting sewage to be discharged into the canal, and for an enquiry as to damages. It was held that the Attorney-General was justified in taking proceedings at the relation of the owner, and that the owner was entitled to an injunction and an inquiry as to damages, although he had permitted an obstruction to remain in the canal whereby the sewage was prevented from being carried away by the flow of the water. See the remarks of JAMES, L.J., on these cases in *Glossop* v. *Heston and Isleworth Local Board* (*infra*).

In the case of *The Attorney-General* v. *The Luton Local Board of Health*, 2 Jur. (N.S) 180; 20 J. P. 163, it appeared that the local board carried the whole drainage of the town of Luton into the river Lea, which flowed through the lands of the relator, who had a mill on its banks. It was not a public navigable river, and there had been a drainage into it of a few houses previous to 1848, but the works of the Local Board greatly increased the sewage, and polluted the water to such an extent that sheep could not be washed in it. It was held by WOOD, V.C., that the Local Board could not justify their proceedings, and that as the relator was interested in the river and had not given his consent, he was entitled to an injunction to restrain them from proceeding further with their works. He also held that the public nuisance was a sufficient ground for the injunction. See also *The Attorney-General* v. *Metropolitan Board of Works*, 1 H. & M. 298; 9 L. T. (N.S.) 139.

Reference must also be made to the case of *The Attorney-General* v. *The Town Council of Birmingham*, 4 K. & J. 528; 24 L. T. (N.S.) 224; 19 W. R. 561, where a local board were restrained from conveying their sewage into a river, and thereby polluting a stream in which private individuals had peculiar and special rights. In that case a local Act provided that the council might cause their sewers to empty themselves into the sea or any public river. But it was held that this did not authorize them to cause injury to the private rights of individuals. The court declined to take into consideration the fact that the public at large would suffer by the interference of the court, and further held that assuming the inhabitants of Birmingham to have had before their Act a right to drain houses into the river, that would not authorize the council in discharging the sewage in such a manner as to injure the plaintiff by polluting the water. See to the same effect *Fielden* v. *Blackburn Corporation*, W. N. 1866, p. 256; *The Attorney-General* v. *Leeds Corporation*, L. R. 5 Ch. 583; 39 L. J. Ch. 254; 22 L. T. (N.S.) 330. And see also *Holt* v. *The Corporation of Rochdale*, L. R. 10 Eq. 354; 39 L. J. Ch. 761; 23 L. T. (N.S.) 43; 35 J. P. 6. This last case was one where an old sewer was enlarged and deepened so as to become practically a new sewer. But in these cases, where there is authority to drain into a stream under a local Act, it must not be assumed that a local board will so use it as to create a nuisance. No one may therefore take proceedings against the board until it is ascertained that they have created a nuisance; but if such nuisance is proved the court will not hesitate to grant a mandatory injunction. See per JESSEL, M.R., in *Smith* v. *Smith*, 44 L. J. Ch. 632; L. R. 20 Eq. 500; 32 L. T. (N.S.) 787; 23 W. R. 771.

In *The Attorney-General* v. *The Corporation of Kingston-upon-Thames*, 34 L. J. Ch. 481; 12 L. T. (N.S.) 665; 11 Jur. (N.S.) 596; 29 J. P. 515, WOOD, V.C., refused to grant an injunction to prevent the corporation of Kingston-upon-Thames from proceeding with a new system of drainage into the river Thames, because evidence was not laid before him of the actual existence of a nuisance. It was not proved that the water in the river had been rendered unfit for cattle to drink or to be used for domestic purposes. A similar decision was pronounced by MALINS, V.C., in *Lillywhite* v. *Trimmer*, 36 L. J. Ch. 525; 16 L. T. (N.S.) 318. See also *Attorney-General* v. *Gee*, L. R. 10 Eq. 131; 23 L. T. (N.S.) 299; 34 J. P. 596, when the information was dismissed on the ground that the injury proved was trifling: and *The Attorney-General* v. *The Cockermouth Local Board*, L. R. 18 Eq. 172; 44 L. J. Ch. 118; 30 L. T. (N.S.) 590; 38 J. P. 660, where an injunction was granted against a local board for polluting a river which was an infringement of the statute, though not to

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a bill for nuisance at the suit of another local board not seriously injured by the pollution. As to when an injunction will be granted as distinguished from an award of damages, see *Pennington* v. *Brinsop Hall Coal Company*, 25 W. R. 874; 5 Ch. D. 769; 37 L. T. (N.S.) 149; 41 J. P. 758. As to the measure of damages, see *Tatton* v. *Staffordshire Potteries Waterworks Company*, 44 J. P. 106.

In *Spokes* v. *The Banbury Local Board*, L. R. 1 Eq. 42; 35 L. J. Ch. 105; 13 L. T. (N.S.) 428, an injunction was granted under circumstances similar to those in the *Birmingham Case, sup.* The defendants did not obey, alleging that they had not yet discovered means of deodorizing the sewage, and that compliance was practically impossible without stopping the drainage of the town. It was held that there had been gross and wilful contempt, and a sequestration was ordered to issue, which order was confirmed on appeal (13 L. T. (N.S.) 453; 11 Jur. (N.S.) 1010). See further *Bidder* v. *Croydon Local Board*, 6 L. T. (N.S.) 778; *The Attorney-General* v. *Richmond*, L. R. 2 Eq. 306; 35 L. J. Ch. 597; 14 L. T. (N.S.) 398; 30 J. P. 708; *The Attorney-General* v. *The Visitors of Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146; 38 L. J. Ch. 265; 19 L. T. (N.S.) 708; *The Attorney-General* v. *The Corporation of Halifax*, L. R. 5 Ch. 116; 39 L. J. Ch. 129; *The North Staffordshire Railway Company* v. *Tunstall*, 39 L. J. Ch. 131; *The Attorney-General* v. *Tunstall Local Board*, W. N. 1875, p. 90; *The Attorney-General* v. *Local Board of Walthamstow*, W. N. 1878, p. 90, where injunctions were granted against local boards to prevent them polluting public streams by the sewage of their respective districts.

In *Blackburne* v. *Somers*, 5 L. R. Ir. 1, it was held that there can be no prescriptive right to pollute a stream by the discharge of sewage in such a manner and to such an extent as to be injurious to public health; that even assuming that a prescriptive right to foul a stream with sewage can be acquired, such right must be restricted to the limits of it when the period of prescription commenced; that if the pollution be substantially increased, whether gradually or suddenly, the court will interfere by injunction to prevent the wrongful excess, and that if it be impossible to separate the illegal excess from the legal user, the wrongdoer must bear the consequences of any restriction necessary to prevent the excess, even if it unavoidably extends to a total prohibition of the user.

In *The Attorney-General* v. *The Corporation of Barnsley*, W. N. 1874, p. 37, JAMES, L.J., said there could be no prescriptive right to create a public nuisance by fouling a river.

As to the acquiring of a prescriptive right to foul a stream as against other riparian proprietors and the loss of it by abandonment, see *Crossley* v. *Lightowler*, L. R. 2 Ch. 478; 36 L. J. Ch. 584; 16 L. T. (N.S.) 438. And see *Sutcliffe* v. *Booth*, 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037, where the watercourse was an artificial one.

An important distinction has been drawn between cases where the nuisance has been created or increased by the acts of the local authority and where it exists independently of their acts, though they may have neglected to provide a proper system of sewage. In *Glossop* v. *The Heston and Isleworth Local Board*, 12 Ch. D. 102; 49 L. J. Ch. 89; 40 L. T. (N.S.) 736; 44 J. P. 36, the defendants were a local board constituted in November, 1875, under the Public Health Act, 1875. The plaintiff complained that for some time before and since the defendants became the sanitary authority, sewage was allowed to fall into a stream passing near his residence so as to pollute it and cause a nuisance to him. It was held that assuming an actionable nuisance to exist, the defendants were not liable in an action for an injunction and damages as they had themselves done no act to create or increase the nuisance. And it was laid down that a local board acting under the Public Health Act, 1875, causing a nuisance by any act which, independently of the statute, would have given a cause of action to any person, may be made liable in damages or be restrained by injunction unless they can show a justification under the powers

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of the statute. But if they do no act themselves to cause a nuisance, but neglect to perform their duty of providing a satisfactory and healthy system of drainage, it is no ground of action by an individual for damages or an injunction, but the remedy is by prerogative writ of *mandamus*. This decision was followed in *The Attorney-General* v. *The Guardians of Dorking Union*, 20 Ch. D. 595; 51 L. J. Ch. 585; 46 L. T. (N.S.) 573; 30 W. R. 579. In that case there was an old sewer which discharged into a stream, and a number of persons had acquired prescriptive rights to send their sewage into it. In addition to these persons there were others who from time to time sent their sewage into the sewer, so that the total amount of sewage gradually increased. The local board had done nothing in respect of this sewer, but it appeared that they had endeavoured though without success to find means for disposing of the sewage of their district. Under these circumstances it was held that as the local board had not themselves constructed the sewer, but had only permitted it to be used as formerly by the inhabitants, they were not doing any act which could be restrained under the Public Health Act or the Rivers Pollution Act, 1876. Had it appeared that the defendants were neglecting their duty in providing a sufficient sanitary scheme for their district, an aggrieved landowner would have had his remedy by *mandamus*. And see *The Attorney-General* v. *Acton Local Board*, 22 Ch. D. 221; 52 L. J. Ch. 108. But where by agreement between a person and the local board, such person was allowed to insert a pipe from his house in order to carry away rain water into a brook, but afterwards such person without the leave of the board sent sewage through the pipe, an injunction was granted against the board on the ground that they had power to stop the drain from being used except according to the agreement, and that they could do so without causing inconvenience to other persons. (PEARSON, J.) *Charles* v. *The Finchley Local Board*, 23 Ch. D. 767; 48 L. T. (N.S.) 569; 52 L. J. Ch. 554; 31 W. R. 717.

In the case of *The Manchester, Sheffield and Lincolnshire Railway Company* v. *The Worksop Board of Health*, 26 L. J. Ch. 345; 23 Beav. 198; 29 L. T. (O.S.) 6, it was held that a local board of health could not justify the making of a sewer which would have the effect of polluting an existing canal belonging to the complainants, and therefore the board were restrained from allowing the house drainage to communicate with a main sewer which ran into the canal. But it is to be noticed that a local authority cannot stop up a drain which they have once authorized to communicate with their sewer. (*Attorney-General* v. *The Guardians of Dorking*; *Attorney-General* v. *Acton Local Board, supra.* And see the notes to the next section).

A canal company was authorized by statute to draw water from a beck for the use of their canal. The water in the beck became polluted by the reception of drainage, and the canal consequently became very offensive and a public nuisance. The company and the lessees were indicted and convicted (see 34 L. J. Q. B. 191; 6 B. & S. 631). WOOD, V.C., granted an injunction to restrain the company from continuing to draw the polluted water from the beck. *The Attorney-General* v. *The Bradford Canal Company*, L. R. 2 Eq. 71; 35 L. J. Ch. 619; 14 L. T. (N.S.) 248; 15 L. T. (N.S.) 9.

For the form of injunction, see *Attorney-General* v. *Halifax, sup.*, and *Lingwood* v. *The Stowmarket Paper Company*, L. R. 1 Eq. 77; 13 L. T. (N.S.) 540; 11 Jur. (N.S.) 993.

An injunction granted against a local board may be enforced by sequestration. See *Spokes v. Banbury Local Board, sup.*; *Wood* v. *The Commissioners of Harrogate*, W. N. 1874, p. 225; *Sutton* v. *Barnett Local Board*, W. N. 1877, p. 167; *The Attorney-General* v. *Walthamstow, sup.*

An injunction to restrain a nuisance may be granted by a county court in an action within its jurisdiction and may be enforced by attachment. *Martin* v. *Bannister*, 4 Q. B. D. 491; 48 L. J. Q. B. 686; 28 W. R. 143; and see *Richards* v. *Cullerne*, 7 Q. B. D. 623.

As to the liability of a local board in respect of a decree against their predecessors, see *The Attorney-General* v. *The Mayor of Birmingham, ante*, note (*b*) to section 12.

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"When statutory powers are conferred under circumstances in which they may be exercised with a result not causing any nuisance, and new and unforeseen circumstances arise which render the exercise of them impossible without causing one and so contravening the law of the land, the persons exercising them are liable to *indictment*." Per COCKBURN, C.J., in *The Queen* v. *Bradford Navigation Company*, 6 B. & S. at p. 648. This principle would seem to be applicable to cases like some of those already mentioned where power is given by local Acts to drain into a public river and a nuisance afterwards results from the altered circumstances of the district or new or more extensive operations or manufacture carried on therein.

With reference to the pollution of streams by sewage and drainage, see also the provisions of the Rivers Pollution Act, 1876, and the Alkali Works Regulations Act, 1881. Both of these Acts are set out in the Appendix.

The cases already cited in this note have reference to complaints made against the local board for polluting streams, and thus interfering with the rights of persons; but in others the questions have arisen as to the power of the local board to intercept the supply of water, and they have been such as have been the subject of discussion in all times, namely, as to the rights of individuals in running streams, pools or ponds. The full discussion of the law applicable to these rights cannot be entered upon here. The local board of health have sometimes been placed in the position of a private individual disputing as to his right to enjoy or to divert the flowing stream, to intercept it for irrigation or other purposes, as or against a riparian owner, to pollute or prevent the pollution of the water, or lastly to drain or restrain the drainage of underground or percolating streams. In one important case which came before the Court of Exchequer, and was the subject of appeal to the Exchequer Chamber, and ultimately to the House of Lords, the right of a local board of health by means of their wells, to drain the underground water from the soil of a neighbouring landowner was established. *Chasemore* v. *Richards*, 2 H. & N. 168; 7 H. L. 349; 29 L. J. Ex. 81. In the elaborate judgments pronounced by CRESSWELL, J., and COLERIDGE, J., who dissented from the rest of the court, will be found an elegant exposition of much of the legal doctrine applicable to this important subject of property. The decision, however, has been supported in *The New River Company* v. *Johnson*, 2 E. & E. 435; 29 L. J. M. C. 93; 1 L. T. (N.S.) 295; 24 J. P. 244; and in *Reg.* v. *The Metropolitan Board of Works*, 32 L. J. Q. B. 105; 3 B. & S. 710; 8 L. T. (N.S.) 238; and in *Ewart* v. *Belfast Poor Law Guardians*, 9 L. R. Ir. 172.

But a local board may not by an underground drain diminish the flow of a surface stream. *Grand Junction Canal Company* v. *Shugar*, L. R. 6 Ch. 483; 24 L. T. (N.S.) 402.

In another case where a canal company were empowered by their local Act to supply their canal with water from all streams, brooks, and watercourses, within one thousand yards of the canal, it was held that they had no ground of complaint against a local authority who having run a sewer under a road within that distance, made open gratings through which the rain and other surface water fell into the sewer. *The Manchester, Sheffield and Lincolnshire Railway Company* v. *The Worksop Board of Health*, *sup.*

And see section 327, sub-section 4, and section 332, *post*, as to the saving for water rights in this Act.

Alteration and discontinuance of sewers.

18. Any local authority may from time to time enlarge, lessen, alter the course of, cover in or otherwise improve any sewer belonging to them, and may discontinue, close up or destroy any such sewer that has in their opinion become unnecessary, *on condition* (*a*), of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the

lawful use of any sewer: Provided that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance (*b*). Sect. 18.

(*a*) These words appear to render it necessary for the local authority to provide the new sewer in the first place. See *The Attorney-General* v. *The Guardians of Dorking*; *The Attorney-General* v. *Acton Local Board*, *ante*, p. 35. As to the alteration and substitution of sewers by persons other than the local authority, see sections 331, 333, *post*. See *Marylebone Vestry* v. *Viret*, 19 C. B. (N.S.) 424; 34 L. J. M. C. 214; 12 L. T. (N.S.) 673, as to the necessity for providing private drains when the public sewer is changed.

(*b*) This proviso is limited to the discontinuance, closing up or destruction of the sewer, and does not extend to the alteration. But see the next section, and s. 24, *post*, p. 42. It would enable persons interested to apply to the Chancery Division for an injunction to stop works, while the local authority could be indicted for any nuisance caused by their proceedings if it were a public one. See *The Queen* v. *The Bradford Navigation Company*, *ante*, p. 36.

19. Every local authority *shall* (*a*), cause the sewers belonging to them to be constructed, covered, *ventilated* (*b*), and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied. Cleansing sewers.

(*a*) Here a duty is imposed on the local authority, and if neglected they will be in default, as to which see section 299, *post*. The word "shall" in this section must be taken as imperative.

(*b*) This word is new. The authority are required to use reasonable skill and care to keep the sewers clean, and are only liable to actions at the suit of persons damaged when they have failed to do so. *Hammond* v. *The Vestry of St. Pancras*, L. R. 9 C. P. 316; 43 L. J. C. P. 157; 30 L. T. (N.S.) 296.

In *Blyth* v. *The Birmingham Waterworks Company*, 25 L. J. Ex. 212, the company were held not liable for the bursting of a pipe caused by a frost of extraordinary severity. And see per Lord COLERIDGE, C.J., in *Dixon* v. *Metropolitan Board of Works*, 7 Q. B. D. at p. 424. In actions of this kind negligence must be shown. *Whitehouse* v. *The Birmingham Canal Company*, 27 L. J. Ex. 25. The omission to make a flap or penstock at the mouth of a drain communicating with the main sewer from the plaintiff's premises, was held to be negligence in *Ruck* v. *Williams*, *ib.* 357. In *Brown* v. *Sargent*, 1 F. & F., ERLE, J., held that a board were not bound to provide sewers sufficient to withstand the pressure caused by extraordinary storms. And see *Meek* v. *The Whitechapel Board of Works*, 2 F. & F. 144.

And see generally as to the obligation imposed by provisions such as those contained in this Act, *Geddis* v. *The Proprietors of the Bann Reservoir*, 3 Ap. Cas. 430.

See also the notes to section 15, *ante*, p. 29.

20. An urban authority (*a*) may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the *ratepayers* of their district. Map of system of sewerage.

(*a*) This power is conferred to the urban authority, but it will be remembered that 27 & 28 Vict. c. 39, s. 10, enables maps or plans of parishes to be made for the purposes of the union assessment committees.

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Power of owners and occupiers within district to drain into sewers of local authority.

21. The *owner* (*a*) or occupier of the premises *within* (*b*) the district of a local authority shall be entitled to cause his *drains* (*c*) to empty into the sewers of that authority *on condition* (*d*), of his giving such notice as may be required by that authority of his intention so to do, and of complying with the *regulations* of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding *twenty pounds* (*e*), and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in *a summary manner* (*e*) from the person so offending any expenses incurred by them under this section.

(*a*) See the definition in section 4, *ante*, p. 6.

(*b*) As to the power of owners and occupiers without the district, see next section.

(*c*) See the definition in section 4, *ante*, p. 13. This section is confined to *drains*. 11 & 12 Vict. c. 63, s. 47, included *sewers*.

(*d*) Hence the notice must be given and the owner must ascertain what are the regulations applicable before he commences to make his communication. The word used is *regulations* not bye-laws, therefore the regulations are at the entire discretion of the local authority. The regulations contemplated appear to be general regulations, applicable to all cases in the district. See section 188, *post*.

Upon similar provisions in the Metropolis Management Amendment Act, 1862, section 61, it was held that where a person had caused a drain to communicate with a sewer, he might afterwards use the drain to the full extent of its capacity. But where a drain had formerly drained into an open sewer which had subsequently been converted into a covered sewer, the board having connected the drain with it at the time when it was covered in, it was held that the owner of the drain could not send an increase of sewage through the drain into the sewer. *Metropolitan Board of Works* v. *London and North Western Railway Company*, 17 Ch. D. 246; 50 L. J. Ch. 409; 44 L. T. (N.S.) 270; 29 W. R. 693.

If the local authority once authorize or permit the drains to be made into their sewer, they cannot afterwards stop them up. *Clegg* v. *Castleford Local Board*, W. N. 1874, p. 229; *Attorney-General* v. *Guardians of Dorking*, *ante*, p. 35; *Attorney-General* v. *Acton Local Board*, *ib*.

(*e*) Section 251, *post*, provides for the recovery both of the penalty and expenses. As a penalty is in the nature of a punishment for an offence it is recoverable on information. The procedure therefore differs from that for the recovery of expenses which are recoverable upon complaints, and are therefore civil debts within sections 6, 35, of the Summary Jurisdiction Act, 1879. This distinction did not exist at the time of the passing of the Act; the procedure was then the same in both cases. If therefore the penalty is proceeded for, the proceedings must be begun by information; if the expenses, by complaint under the sections just mentioned. It is to be observed that the expenses referred to are the expenses of the closing only. It is to be presumed that if the works have occasioned damage to the sewer of the local authority, they can maintain an action for compensation in respect of such damage; and moreover,

that the local authority may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be quite inadequate to repair. **Note to Sect. 21.**

The Rivers Pollution Act, 1876, s. 7, which is set out in the Appendix, requires the local authority to give facilities to manufacturers to enable them to carry liquid refuse into their sewers.

22. The *owner* (*a*) or occupier of any premises without the district of a local authority may cause any *sewer* (*b*) or drain from such premises to communicate with any sewer of the local authority on such terms and conditions (*c*) as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, *at the option of the owner or occupier* (*d*), by a court of summary jurisdiction or by arbitration in manner provided by this Act. Use of sewers by owners and occupiers without district.

(*a*) See the definition in section 4, *ante*, p. 6.

(*b*) The previous section was confined to a drain, but here the term *sewer* has been introduced, because a more extended easement than that of a drain may be required in respect of premises without the district. The sewer may have to be continued for some distance.

(*c*) See note (*d*) to the last section as to compliance with the conditions of the local board, and as to the effect of permitting drains to communicate with the sewers. See also section 28, *post*, p. 45, as to agreements between local boards for the communication of sewers with the sewers of the adjoining districts. It may be suggested that if a communication were wrongfully made so as to cause damage, an action for trespass would probably lie. An injunction would probably be granted even if there were no damage beyond the fact that the communication had been made without compliance with the conditions of the local authority.

(*d*) See, however, section 181, *post*. It is to be presumed that this provision is excepted out of the general provision. See note on section 4, *ante*, p. 6. When the dispute arises, if the owner or occupier do not exercise the option at once, the local authority may propose one alternative, and if it be not rejected, and the alternative selected, within a reasonable time, it will probably be best for the authority to proceed in the court, as the proceedings there can be more readily supported than would be the case in an arbitration.

23. Where any *house* (*a*) within the district of a local authority is without a drain sufficient for effectual drainage (*b*), the local authority shall by written notice (*c*) require the owner (*d*) or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than *one hundred feet* from the site of such house (*e*); but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size (*f*), and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary. Power of local authority to enforce drainage of undrained houses.

Sect. 23. If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required (*g*), and may recover *in a summary manner* (*h*) the expenses incurred by them in so doing from the owner, or may by order declare the same to be *private improvement expenses* (*i*).

Provided (*k*) that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers (*l*) of such houses to cause their drains to empty therein, and may apportion as they deem just (*m*) the expenses of the construction of such sewer among the owners of the several houses, and recover *in a summary manner* (*h*) the sums apportioned from such owners, or may by order declare the same to be *private improvement expenses* (*i*).

(*a*) See the definition in section 4, *ante*, p. 11. It is immaterial when the house was built.

(*b*) This is an alteration of 11 & 12 Vict. c. 63, s. 49, which required a report of the surveyor and made the decision of the local board conclusive. Here no report is required, and the fact of insufficient drainage may be questioned by the owner or occupier. The clause is, however, nearly identical with 29 & 30 Vict. c. 90, s. 10.

(*c*) See as to the authentication and service of this notice, sections 266, 267, *post*.

(*d*) See the definition in section 4, *ante*, p. 6. The local authority have an option as to whether they will give notice to the owner or occupier, and will doubtless be guided by their view as to how prompt and effectual action can be best obtained. See section 306, under which the owner may be empowered to enter when the occupier prevents him.

(*e*) There is no reference to the sea as in the former Act, since it is not desirable to contemplate the pollution of the sea-shore, and the latter part of the clause would enable a drainage into the sea when practicable without injurious effects.

A question has been raised as to the meaning of the word *site*. Does it include the curtilage? The better opinion seems to be that it means that piece of land upon which the house itself stands.

(*f*) It will be seen from *Austin* v. *The Vestry of Lambeth*, 4 Jur. (N.S.) 274, that the local board have the exclusive power of deciding whether their directions are complied with in regard to the materials to be used. The vestry ordered a drain to be made with pipes of *stoneware of the best kind and quality*, and the builder laid down *Aylesford pipes*, but the vestry declared that these were not stoneware and proceeded to remove them. STUART, V.C., held that it was for them to determine the question and refused to grant an injunction against them on motion. His decision was confirmed by the Lords Justices on appeal (27 L. J. Ch. 388, 392); and the bill was afterwards dismissed with costs on the hearing, his Honour being satisfied that the vestry had not acted capriciously or vexatiously. (4 Jur. (N.S.) 1032.) The local authority must also determine the size of the drain. See *Woodward* v. *Cotton*, 3 L. J. Ex. 300.

(*g*) "The conditions prescribed by this section as a preliminary to the sanitary body taking the work out of the hands of the owner have regard solely to

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his rights. They are designed to control the action of the board as against him and not to limit their capacity to do the work. It is not permitted to them arbitrarily to interfere and do the work at the owner's expense without first giving him an opportunity of doing it himself. But if they were to do so, he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." Per LUSH, J., in *Hall* v. *The Corporation of Batley*, 47 L. J. Q. B. 148; 37 L. T. (N.S.) 310; 42 J. P. 151.

(*h*) See as to the recovery of these expenses, section 251, *post*, and note (*e*) to section 21, *ante*, p. 38.

(*i*) See section 213, *post*. If there be any difficulty by reason of the owner not having a right to carry his drain through his neighbour's land, the local authority may be able by means of the powers conferred upon them by this Act to obviate the difficulty. For example, suppose the house to be drained is within 100 feet of a sewer, but the intervening land belongs to another person. The owner of the house would not by receiving the notice be entitled to make his drain through the intervening land, for the notice does not enable him to commit a trespass. (See *The Mayor of Scarborough* v. *The Scarborough Rural Sanitary Authority*, 1 Ex. D. 344, which was the case of a notice under section 94 to abate a nuisance on another person's land.) But the local authority might lawfully make the drain under such circumstances, making compensation under section 308 to the person whose land was interfered with. In regard to the payment of the expenses as between lessor and lessee, see section 226, *post*. The case of *Finlinson* v. *Porter*, L. R. 10 Q. B. 188; 44 L. J. Q. B. 56; 32 L. T. (N.S.) 391; 39 J. P. 661, illustrates the effect of this provision between joint and neighbouring tenements having drains for mutual use. There the defendant conveyed to the plaintiff certain land subject to the joint ownership and right to the use by the defendant of a drain running through the land conveyed, together with the right of entering and repairing the drain or replacing pipes in it. The drain discharged into a sewer which was afterwards removed by the local board who constructed another at a lower depth. The defendant thereupon lowered the drain and put in fresh pipes in order to adapt it to the new sewer, and it was held that he was entitled to do so, whether his right under the deed was to be regarded as that of a tenant in common of the drain or as an easement only. But the easement must not be increased. See *Watson* v. *Troughton*, 47 J. P. 518.

(*k*) This is a new provision and applies where the local authority find it most convenient or less expensive to change their sewer or to make an additional one than to require a number of house drains to be connected with an existing sewer.

(*l*) See note (*d*) *ante*.

(*m*) Perhaps there may be an appeal to the Local Government Board under section 268, *post*. But reference should be made to *The Vestry of Marylebone* v. *Viret*, 19 C. B. (N.S.) 424; 34 L. J. M. C. 214; 12 L. T. (N.S.) 673; 11 Jur. (N.S.) 907, a case where the vestry acting under the Metropolis Local Management Act, 18 & 19 Vict. c. 120, s. 73, required the occupier to make a new drain, but it was held that the vestry were in fact seeking to make a complete new scheme of drainage, and that the occupier was not required to make the new drain or bear the charge thereof. The work was necessary not because the drain required improvement, in which case the circumstances would have been within section 73 which corresponds to the above section, but because of the alteration of the sewers which brought the case within section 69 corresponding to section 18 of this Act (*ante*, p. 36.)

Power of local authority to require

24. Where (*a*) any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to

Sect. 24. houses to be drained into new sewers.

the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable (*b*), the local authority may, *on condition* (*c*) of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act (*d*).

(*a*) This is a provision which applies to houses built before the local board had established their own sewers, as otherwise the proper communication would have been made.

(*b*) See section 41, *post*, for the procedure where a drain is a nuisance or injurious to health.

(*c*) The provision is to be performed before the previous drain is closed.

(*d*) And therefore payable according to section 207. They are not to be charged to the owners or occupiers.

Penalty on building house without drains in urban district.

25. It shall not be lawful *in any urban district* (*a*) newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor (*b*), or to occupy *any house so newly erected or rebuilt*, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor (*c*) may appear to the urban authority to be necessary for the effectual drainage of such house (*d*); and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the *site* (*e*) of the house to be built or rebuilt; but if no such means of drainage are within that distance (*f*), then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct.

Any person who causes any houses to be erected or rebuilt (*g*) or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

(*a*) Note the restriction. If the guardians of a union find it desirable that this provision should be in operation, they should apply to the Local Government Board to grant them the powers of an urban authority under section 276, *post*.

(*b*) This constitutes a *new building*. See section 159, *post*.

(*c*) This must be the surveyor of the urban authority. See section 189, *post*.

(*d*) Generally the bye-laws of the authority require plans and specifications of the building and its drainage to be submitted to the board of the authority. These are referred to the surveyor who is to report to the board. The board must then decide as to the sufficiency of the proposed drainage, and give their

directions as to the course to be followed. There does not appear to be any appeal against their directions. It is to be observed that the authority cannot compel a building owner to make *a sewer* as distinguished from a drain under this section. *Clarke* v. *Paddington Vestry*, 5 Jur. (N.S.) 138. Note to Sect. 25.

(*e*) See note (*e*) to the last section.

(*f*) This enactment will often render it necessary for the person proposing to re-build to secure the rights of sewerage under the ground adjoining his property.

(*g*) There is no penalty imposed upon the occupier. As to the recovery of the penalty, see section 251, *post*.

26. Any person who in any urban district, without the written consent of the urban authority (*a*),— Penalty on unauthorized building over sewers and under streets in urban district.

(1.) Causes any *building* (*b*), to be newly erected over any sewer of the urban authority; or

(2.) Causes any vault, arch or cellar, to be newly built or constructed under the carriageway of any *street* (*c*),

shall forfeit to the urban authority the sum of *five pounds* and a further sum of *forty shillings* for every day during which the offence is continued after written notice in this behalf from the urban authority (*d*); and the urban authority may cause any building, vault, arch or cellar, erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover *in a summary manner* (*e*), any expenses incurred by them in so doing from the offender.

(*a*) There is no special mode of giving this consent, as in the former Act. It may be expressed in a letter from the clerk of the board. The consent ought to be entered on the board minutes, and a copy of the minute forwarded to the person requiring the consent.

(*b*) As to what is a *building* see note to section 4, *ante*, p. 12.

(*c*) See the definition in section 4, *ante*, p. 9. This prohibition is here introduced because such vault or cellar might interfere with the course of a sewer hereafter to be made. It refers to the carriage-way only, and has no reference to the footpath.

(*d*) Forfeitures are recovered by process described in section 251, *post*. A forfeiture under this section is recoverable as a penalty, for it will be observed that the section speaks of the *offence*. The proceedings are therefore in their nature criminal, and the forfeitures must be recovered on information. See note (*e*) to section 21, *ante*, p. 38. The five pounds is recoverable in any court, the forty shillings only after notice.

(*e*) See section 251, *post*, and note (*e*), to section 21, *ante*, p. 38. These expenses are recoverable on complaint, and constitute a civil debt under the Summary Jurisdiction Act, 1879, for although the section speaks of them as recoverable from the *offender*, they are not in the nature of penalties for the offence, which are provided for by the previous part of the section.

Disposal of Sewage.

27. For the purpose of receiving, storing, disinfecting, distributing or otherwise disposing of sewage, any local authority (*a*) may— Powers for disposing of sewage.

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(1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority) without their district; and

(2.) Contract (*b*) for the use of purchase or take on lease any land, buildings, engines, materials or apparatus either within or without their district; and

(3.) Contract (*b*) to supply for any period not exceeding *twenty-five years* (*c*) any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply:

Provided that no nuisance be created in the exercise of any of the powers given by this section (*d*).

(*a*) This and the following sections apply to both urban and rural authorities, the words in the section being "any local authority."

The corresponding section in 11 & 12 Vict. c. 63, s. 46, was held not to enable the local board to enter the land of a person against his consent, and make a tank and reservoir or depository therein, for the reception of the sewage from a sewer proposed to be made after a report from the surveyor and a notice to the owner of the land. Where such a proceeding was proposed the Court of Chancery interfered by an injunction. *Sutton* v. *The Mayor of Norwich*, 27 L. J. Ch. 739; 31 L. T. (O.S.) 389. See also *The Attorney-General* v. *Metropolitan Board of Works*, 1 H. & M. 298; 9 L. T. (N.S.) 139. While therefore a local board have power to make sewers in or through private lands (section 16), without the consent of the owner of such lands (paying compensation), they appear to have no such power to make works for the disposal of sewage under this section. If it be necessary the local authority may purchase land, and for the provisions applicable thereto, see sections 175, 176, *post*. If it be not so necessary, but property is injured, the person entitled thereto will have a claim for compensation, as to which see section 308, *post*.

11 & 12 Vict. c. 63, s. 44, used general language in reference to the making of the sewer. Nevertheless it was held in *Haywood* v. *Lowndes*, 28 L. J. Ch. 400; 4 Drew. 454; 32 L. T. (O.S.) 366; 5 Jur. (N.S.) 185, that a local board could not make sewers out of their district. Hence 21 & 22 Vict. c. 98, s. 30, and 24 & 25 Vict. c. 61, ss. 4-7, were passed, the latter of which contains provisions which are now set out in sections 32-4, of this Act and apply only to a sewer or other work *out* of the district.

(*b*) As to the contracts of urban authorities see section 174, *post*. Those of rural authorities are regulated by the statutes and orders relating to poor law guardians. See section 9, *ante*, p. 21.

All contracts with authorities shall be under seal if the value or amount exceed £50.

(*c*) A longer term than is provided in the previous Act, 30 & 31 Vict. c. 113, s. 4. Great care is required in framing these contracts. See farther section 30, *post*, p. 46, as to the term of the contract.

A local board entered into an agreement with a sewage company, in pursuance of which they afterwards granted a lease to the company of the sewage works of a town and of a plot of land for a term of 14 years, the company covenanting that they would during the term keep the outfall of the works, with the engines, pumps and apparatus in proper working order, so as to admit of the free flow of the sewage through the sewers communicating with the works, and so that the same might not at any time be stopped. To a bill by the local board against the company, complaining that the company's works were insufficient to treat the sewage successfully, that they were pumping only

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a portion of the sewage out of the sewers, and were damming up or heading back the residue in the sewers so as to be a nuisance to the inhabitants of the town, and that the plaintiffs were being threatened with proceedings, and praying for an injunction to restrain the defendants from permitting the sewage to remain in the sewers so as to be a nuisance or a damage to the plaintiffs, and from damming up or heading back the sewage in the sewers, the defendants demurred on the ground that the court could not superintend the proper performance of the works, that the plaintiffs had alleged no special damage, and that it was not the practice of the court to restrain the infringement of a public right at the suit of a corporation, except at the instance or in the presence of the Attorney-General—the court overruled the demurrer and granted the injunction. *Nuneaton Local Board* v. *The General Sewage Company*, L. R. 20 Eq. 127; 44 L. J. Ch. 561.

(*d*) See The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 24. This prohibition applies to private as well as public nuisances, and local boards have been restrained from carrying on works of sewerage and drainage highly important with reference to their own district and the sanitary state of it, when, however, they created an injury and a nuisance to the property of individuals. In the note to section 17, *ante*, p. 32, this subject is dealt with more fully.

Power to agree for communication of sewers with sewers of adjoining district.

28. The local authority of any district may, by agreement (*a*) with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers to communicate with the sewers of such last-mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the Local Government Board (*b*): Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

(*a*) This should be under seal. As the Local Government Board are to give their sanction to it, a draft of the agreement should be submitted to that board before it is accepted and executed. The public inquiry required by 35 & 36 Vict. c. 79, s. 32, is dispensed with, but perhaps the board will make some local enquiry.

(*b*) See the further power granted by section 285, when the sanction of the Local Government Board is not required to the joint action there authorized.

By an agreement between the N. local board and the C. local board, it was agreed that the N. board should make a sewer and allow the sewers of the C. district to drain into it, but the sewage of any other districts or places was not to be permitted by the C. board to pass into their sewage so as to discharge into the sewer to be made by the N. board. Under Acts of Parliament then in existence, the owner of premises beyond the limits of a district had power to make a sewer to communicate with the sewers of the district, and by an Act subsequently passed (Act of 1875, section 22), similar powers were given. It was held that the provisions of the agreement were overruled by the subsequent Act, and that the N. board could not restrain the C. board from making sewers

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which would discharge into the sewer of the N. district. It was held also that the agreement must be taken to have been made subject to the provisions of the law then existing under which the owners of premises beyond the C. district had similar powers. *Newington Local Board* v. *Cottingham Local Board*, 12 Ch. D. 725; 48 L. J. Ch. 226; 40 L. T. (N.S.) 58. Where there is no agreement such as that mentioned in the question, it appears from *The Attorney-General* v. *The Acton Local Board, ante*, p. 35, that notwithstanding the obligation imposed on a local board by the Public Health Act, 1875, to drain their district, their right to send the sewage of their district directly or indirectly into the sewers belonging to the sanitary authority of an adjoining district is, in the absence of express enactment or agreement, no higher than the right of a landowner to send sewage from his land on to the land or into the drains of a neighbouring landowner. If therefore a prescriptive right has been acquired to send some sewage from one district into the sewers of another, the burden cannot be increased without the consent of the sanitary authority of the latter district. The *ratio decidendi* of *The Metropolitan Board of Works* v. *The London and North Western Railway*, 17 Ch. D. 246 (*ante*, p. 38), applies to a local board just as it does to an ordinary landowner. An injunction was granted in the absence of proof of substantial damage, on the ground that the defendants by their pleading claimed a right to continue doing that which the court held they were not entitled to do. The court granted such injunction as to the future, but refused to grant a mandatory injunction to compel the stopping up of existing drains; because, (1) to do so would cause serious inconvenience to the district; and (2) because it is doubtful whether a local board have power to stop up drains which they have once authorized to be connected with their sewers. And inasmuch as the injunction applied only to the future, the court refused to suspend its operation.

Power to deal with land appropriated to sewage purposes.

29. Any local authority may deal with any lands held by them for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding *twenty-one years* for agricultural purposes (*a*), or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance (*b*).

(*a*) Such a lease granted to a member of the board will not disqualify him under Schedule II., r. 64, *post*. *Reg.* v. *Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. (N.S.) 688; 44 J. P. 507.

There is another provision for leases of the lands of authorities in section 177, but this provision overrides 5 & 6 Wm. 4, c. 69, s. 3, as regards rural authorities.

(*b*) This appears to be a repetition of the proviso to section 27, *ante*, p. 44.

Contribution to works under agreement for supply

30. Where any local authority *agree* with any *person* (*a*) as to the supply of sewage and as to works to be made for the purpose of such supply (*b*), they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become *shareholders* (*c*) in any company with

which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested. Sect. 30. or distribution of sewage.

(*a*) See the definition in section 4, *ante*, p. 5.

(*b*) See section 27, sub-section (3), *ante*, p. 44. This section contemplates the execution of works by the landowner; under the previous section the execution may be by either party.

(*c*) This provision was contained in 30 & 31 Vict. c. 113, s. 15; but the consequences might be so complicated that it is hardly to be expected that it will be often adopted. It is difficult to consider the consequences of a local authority being involved in a winding-up suit. On this subject *Buckley on Companies*, pp. 6, 74, may be referred to. And see also *The Royal Bank of India's Case*, L. R. 4 Ch. 252, as to the liability of a corporate body in respect of shares in a company.

31. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorized by "The Improvement of Land Act, 1864," and the provisions of that Act shall apply accordingly. Application of 27 & 28 Vict. c. 114, to works for supply of sewage.

The provisions of this Act are too numerous to be set out in this work. It enables owners of limited interests in lands to execute certain improvements (in which by this section sewage works are now included), and to charge the lands with the cost.

As to Sewage Works without District.

32. A local authority shall, three *months* (*a*) at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district (*b*), give notice (*c*), of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made. Notice to be given before commencing sewage works without district.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through, across, under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served (*d*) on the owners (*e*) *or reputed* owners, lessees or *reputed* lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the *trustees* (*f*), *surveyors of highways*, or other persons having the care of such roads or streets.

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(*a*) That is calendar months. See 13 & 14 Vict. c. 21.

(*b*) The power to construct a sewer without the district is given by section 16, *ante*, p. 30. The powers of the local authority as to other sewage works are contained in section 27, *ante*, p. 43.

(*c*) One advertisement would satisfy the terms of this clause; but the local authority may sometimes deem it advisable to advertise several times. The notice should be signed by the clerk to the authority. See section 266, *post*.

(*d*) No time is specified when the notice is to be served, but it is to be implied from the next clause that it should be three months before it is proposed to commence the works.

(*e*) See the definition in section 4, *ante*, p. 6. As to the authentication and service of such copy, see sections 266, 267, *post*; and as to the term *reputed* owners, see note on section 176, *post*.

(*f*) The service on the clerk of the trustees will doubtless be sufficient. It will be remembered that in urban districts the sanitary authority is the surveyor of highways. See section 144.

In case of objection, works not to be commenced without sanction of Local Government Board.

33. If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and *serves notice* in writing of such objection on the local authority (*a*) at any time within the *said three months*, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as herein-after mentioned (*b*), unless such objection is withdrawn.

(*a*) The notice should be addressed to the local authority, but may, as it seems, be in general terms. If there be no objection, no reference to the Local Government Board will be necessary unless a loan is required, as to which see section 233, *post*.

(*b*) See the next section.

Inspector to hold inquiry and report to Local Government Board.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry (*a*) on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

(*a*) See as to this section 293, *post*. These inquiries have been frequently held. The application should be in writing on folio foolscap paper, and should be signed by the clerk of the local authority, although it may indeed be sealed with the seal of such authority, which, however, frequently causes inconvenience and delay.

Privies, Waterclosets, &c.

Penalty on building

35. It shall not be lawful newly to erect any *house* (*a*), or to rebuild any house pulled down to or below the ground floor (*b*),

without a *sufficient* (*c*), watercloset, earthcloset or privy, and an *ashpit* (*d*) furnished with proper doors and coverings. Sect. 35. houses without privy accommodation.

Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a *penalty* (*e*) not exceeding twenty pounds.

(*a*) See note on section 4, *ante*, p. 11.

(*b*) See section 159, *post*.

(*c*) In case of dispute the justices will decide as to what is or is not sufficient upon the evidence before them.

A respondent built two cottages with one privy, which was found as a fact to be sufficient for the use of the occupiers of both cottages. It was held that he had complied with the requirements of this section, on the ground that it does not require a separate watercloset, earthcloset or privy, for every individual house built or rebuilt. *Guardians of Clutton Union* v. *Pointing*, 4 Q. B. D. 340; 48 L. J. M. C. 135; 40 L. T. (N.S.) 844; 27 W. R. 658; 43 J. P. 686. But though no proceedings have been taken under this section, it is open to the authority at any time to proceed under the next section.

(*d*) The ashpit here is understood to be in connection with a privy.

(*e*) See as to the recovery of this penalty section 251, *post*.

36. If a house within the district of a *local* authority appears to such authority by the report of their surveyor or *inspector of nuisances* (*a*) to be without a *sufficient* (*b*) watercloset, earthcloset or privy, and an ashpit furnished with proper doors and coverings, the local authority *shall* (*c*) by written notice (*d*), require the owner or occupier (*e*) of the house, within a reasonable time therein specified, to provide a sufficient watercloset, earthcloset or privy, and an ashpit furnished as aforesaid, or either of them, as the case may require (*f*). Power of local authority to enforce provision of privy accommodation for houses.

If such notice is not complied with, the local authority *may* (*g*), at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover *in a summary manner* (*h*) from the *owner* (*i*), the expenses incurred by them in so doing, or may by order declare the same to be *private improvement expenses* (*k*): Provided that where a watercloset, earthcloset or privy, has been and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a watercloset, earthcloset or privy, may be so used, *they need not* (*l*) require the same to be provided for each house.

(*a*) This officer is introduced here for the first time.

(*b*) Though the officer is to report, the local authority are to determine as to the sufficiency of the convenience. It has been decided by STUART, V.C., and afterwards by the Lords Justices upon appeal, that a district board under the Metropolis Local Management Act, 18 & 19 Vict. c. 120, where there is a clause identical with the above, could not lay down any general rule prescribing the use of privies, and requiring waterclosets to be erected in the place of privies, in compliance with the general rule, and not with reference to the par-

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ticular circumstances of the case. When, therefore, the board were proceeding to erect waterclosets in default of the owner, it was held that these proceedings could not be supported. *Tinkler* v. *The Wandsworth District Board of Works*, 27 L. J. Ch. 342; 2 De G. & J. 261; 30 L. T. (o.s.) 146; 22 J. P. 223.

But when the local authority have decided that the existing accommodation is insufficient, it appears that they have power to order what works must be executed, for the section gives them power to order the providing of "a sufficient watercloset, earthcloset or privy, and an ashpit or either of them *as the case may require.*" *Vestry of St. Luke* v. *Lewis*, 31 L. J. M. C. 73; 1 B. & S. 865; 5 L. T. (N.S.) 608. This decision was followed in *The Sherborne Local Board* v. *Bogle* (Q. B. D. 18th March, 1880; 46 J. P. 675). And see per POLLOCK, B., in *Ex parte Whitchurch*, 6 Q. B. D. 545; 50 L. J. M. C. 99; 45 J. P. 617.

As to the enforcing of the provision of privy accommodation in houses let in lodgings, see section 90, *post*.

(*c*) This is a duty imposed upon the local authorities, and applies to each class of authority.

(*d*) See sections 266, 267, *post*, as to the authentication and service of the notice.

(*e*) See section 306, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(*f*) See note (*b*), *supra*.

(*g*) This proceeding is permissive. If the owner have executed some works the local authority must be prepared to prove their insufficiency by evidence.

(*h*) See section 251, and note (*e*) to section 21, *ante*, p. 38. It is to be observed that justices when enforcing payment of these expenses act ministerially only. They cannot enter into the consideration of whether the accommodation existing before the notice was insufficient or not. If the notice was within the jurisdiction of the board, the justices have no alternative but to order payment. The only method of questioning the propriety of the board's decision is by appeal to the Local Government Board under section 268, *post*. *Sherborne Local Board* v. *Bogle*; *Vestry of St. Luke* v. *Lewis*, *supra*. And see also *Hargreaves* v. *Taylor*, 32 L. J. M. C. 111; 3 B. & S. 613; 8 L. T. (N.S.) 149.

(*i*) Though the notice may be given to the owner *or* occupier, these expenses are to be recovered from the *owner*, who is defined in section 4, *ante*, p. 6. He may appeal against the order to the Local Government Board under section 268, *post*.

(*k*) See section 213, *post*.

(*l*) It will be observed that the previous part of the section rendered it incumbent upon the local board to require a sufficent watercloset or privy to be made, and therefore though this proviso removes that compulsion in this particular case, it does not prevent them from making the requisition when they think proper to do so. The board are the sole judges of the insufficiency under this section. At the same time it must be remembered that one privy *may* be sufficient for two houses, so as to protect the owners from liability to the penalty under section 35. The two sections are entirely distinct. Per COCKBURN, C.J., in *The Guardians of Clutton Union* v. *Pointing*, *ante*, p. 49.

As to earth-closets.

37. Any enactment in force within the district of any *local* authority requiring the construction of a *watercloset* shall be deemed to be satisfied by the construction, with the approval of the local authority, of an *earthcloset*.

Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to

any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water. Sect. 37.

Any local authority may themselves undertake or *contract* (*a*) with any person to undertake a supply of dry earth or other deodorizing substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" *includes* (*b*) any place for the reception and deodorization of fœcal matter constructed to the satisfaction of the local authority.

(*a*) See section 173, *post*, as to this contract.
(*b*) As to the meaning of this word, see *ante*, p. 5.

Privy accommodation for factories.

38. Where it appears to any *local* authority by the report of their surveyor (*a*) that any house (*b*) is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture, trade or business, the local authority may, if they think fit, by written notice (*c*) require the owner *or* occupier (*d*) of such house, within the time therein specified, to construct a sufficient (*e*) number of waterclosets, earthclosets or privies, and ashpits for the separate use of each sex.

Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued (*f*).

(*a*) In this section the surveyor only is referred to, but his report will not conclude the authority; they have a discretion whether to act or not. By section 4 of the Factory Act, 1875 (41 Vict. c. 16), where it appears to an inspector under that Act that any act, neglect or default, in relation to any drain, watercloset, earthcloset, privy, ashpit, water supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health and not under that Act, that inspector shall give notice in writing of such act, neglect or default, to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon as to that authority may seem proper for the purpose of enforcing the law. The inspector may for the purposes of this section take with him into a factory or a workshop, a medical officer of health, inspector of nuisances or other officer of the sanitary authority. This section does not take away the power of the local authority to act on the report of their surveyor. See the provisions of the Act of 1883 as to bakehouses, *ante*, p. 23.

(*b*) See the definition in section 4, *ante*, p. 11.

(*c*) See sections 266, 267, as to the service and authentication of notices.

(*d*) Under this section the occupier may be required to execute the works, as the occupier of a factory may be quite competent to attend to this complaint, and may be the proper person to remedy it.

(*e*) The local authority may properly specify the number which they think

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sufficient, but their decision will not conclude the question if the owner or occupier construct what he considers sufficient and the justices concur. Compare this section with the provisions of section 36 on this point, and see note (*b*) to that section, *ante*, p. 49. It is also to be noticed that, though the previous section applies to such a house as is herein described, it only required a sufficient watercloset to be supplied. In this section *separate* privies are required to be provided for the different sexes.

(*f*) As to the recovery of this penalty, see section 251, *post*.

Public necessaries.

39. Any *urban* authority may, if they think fit, provide and maintain, in proper and convenient situations (*a*), urinals, watercloset, earthclosets, privies and ashpits, and other similar conveniences for public accommodation.

(*a*) In *Biddulph* v. *The Vestry of St. George, Hanover Square*, 33 L. J. Ch. 411; 3 De G. J. & S. 493; 8 L. T. (N.S.) 558; 2 N. R. 212, the defendants assuming to act under the corresponding section of 18 & 19 Vict. c. 120, (Metropolis), passed a resolution to erect a urinal in Grosvenor Place, adjacent to the wall of Buckingham Palace. STUART, V.C., being of opinion that the erection of a urinal at that spot would be a serious injury to the property in the neighbourhood, upon bill filed by a resident nearly opposite to the site of the proposed urinal, granted an injunction restraining the vestry from erecting it. Upon appeal the Lords Justices being of opinion that the evidence did not show that the proposed urinal would be in point of law a nuisance, or that the vestry were exceeding their statutory powers in what they proposed to do, or that they were influenced by improper motives, discharged the order for the injunction. In *Mason* v. *The Wollasey Local Board*, L. J. Notes of Cases, 1876, p. 212, JESSEL, M.R., held that in the absence of improper motives an absolute discretion was given to the urban authority in choosing the site. (And see the decision of POLLOCK, B., in *Spicer* v. *The Mayor of Margate*, 24 S. J. 821). But while the urban authority have a discretion, they will be controlled by the court if they acted in an unreasonable manner by erecting a urinal where it would be a nuisance to the owners of adjoining property (*Vernon* v. *The Vestry of St. James, Westminster*, 16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. (N.S.) 229), inasmuch as the words used in the section are "proper and convenient." Each case will therefore depend on its own circumstances.

Drains, privies, &c. to be properly kept.

40. Every *local* authority *shall* (*a*) provide that all drains, watercloset, earthclosets, privies, ashpits and cesspools, within their district be constructed and kept so as not to be a nuisance or injurious to health.

(*a*) Here a duty is imposed upon the local authority which requires much earnest attention. The consequences of default appear in section 299, *post*.

Examinations of drains, privies, &c. on complaint of nuisance.

41. On the written application of any person to a *local* authority, stating that any drain, watercloset, earthcloset, privy, ashpit or cesspool, on or belonging to any premises within their district is a nuisance (*a*) or injurious to health (but not otherwise), the *local* authority may, by writing (*b*), empower their surveyor or inspector of nuisances, after twenty-four hours' written notice (*c*) to the occupier of such premises, or *in case of emergency* (*d*) without notice,

to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain, watercloset, earthcloset, privy, ashpit or cesspool. If the drain, watercloset, earthcloset, privy, ashpit or cesspool, on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the *local* authority. If the drain, watercloset, earthcloset, privy, ashpit or cesspool, on examination *appear* to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing (*e*) to be given to the owner or occupier (*f*) of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default (*g*); and the local authority may, if they think fit, execute such works, and may recover *in a summary manner* from the *owner* the expenses (*h*) incurred by them in so doing, or may by order declare the same to be private improvement expenses (*i*). Sect. 41.

(*a*) From the construction which has been placed on similar language in sections 47 and 91, it may be inferred that if the nuisance complained of consists of something offensive to the senses, it is not necessary that it should *also* be injurious to health. See *The Malton Urban Sanitary Authority* v. *The Malton Farmers' Manure Company*, 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. (N.S.) 755; 44 J. P. 155; *Banbury Local Board* v. *Page*, 8 Q. B. D. 97; 51 L. J. M. C. 21; 45 L. T. (N.S.) 759; 30 W. R. 415; 46 J. P. 184; *Bishop Auckland Local Board* v. *Bishop Auckland Iron Company*, 10 Q. B. D. 138; 52 L. J. M. C. 38; 31 W. R. 288; 48 L. T. (N.S.) 223; 47 J. P. 389. As to the liability of an owner or occupier for damage done by the escape of sewage in consequence of a defective drain on his own premises, see *Humphries* v. *Cousins*, 2 C. P. D. 239; 46 L. J. Q. B. 56; 41 J. P. 280.

(*b*) This should be under the hand of the clerk of the authority, and a notice of the authority should be entered on the board minutes.

(*c*) *Query*, who is to give this notice. Apparently either the clerk, or surveyor, or inspector of nuisances. As to the authentication and service of the notice, see sections 266, 267, *post*.

(*d*) The local authority will determine in the first place whether there is a case of emergency, but this is open to controversy in subsequent proceedings. There should be an entry on the board minutes to the effect that the particular case is one of emergency.

(*e*) See sections 266, 267, *post*, as to the authentication and service of this notice.

(*f*) See section 306, *post*, under which the owner may be empowered to enter to do these works when the occupier prevents him. It will be observed that the notice may be given to either the occupier or the owner, although by a subsequent clause the expenses incurred by the local authority in doing the works are to be recovered from the owner only. In an action for a nuisance arising out of defective drains, the occupier and not the owner is *primâ facie* liable (*Russell* v. *Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449), but the owner may be liable on indictment if it appears that he erected the building, &c., so as to

Note to Sect. 41.

create the nuisance, or so that it is likely to produce a nuisance after it has been let to a tenant. (*R.* v. *Pedly*, 3 L. J. M. C. 119; 1 A. & E. 822.) And see *post*, notes to section 94.

(*g*) See section 251, *post*, as to the recovery of this penalty.

(*h*) As to the recovery of these expenses, see note (*e*) to section 21, *ante*, p. 38. The order of the local authority is conclusive, and cannot be controlled or altered by the justices in proceedings to enforce payment, though an appeal will lie to the Local Government Board under section 268, *post*. See the notes to section 36, *ante*, p. 50.

(*i*) See section 213, *post*.

Scavenging and Cleansing.

Regulations as to Streets and Houses.

Local authority to provide for cleansing of streets and removal of refuse.

42. Every *local* authority may, and when required by *order* of the Local Government Board *shall* (*a*) themselves undertake or contract for—

The removal of *house refuse* from premises (*b*);

The cleansing of earthclosets, privies, ashpits and cesspools; either for the whole or any part of their district: Moreover every urban authority and any rural authority invested by the Local Government Board with the requisite powers (*c*) may, and when required by the order of the said board *shall*, themselves undertake or contract for the *proper cleansing of streets*, and may also themselves undertake or contract for the *proper watering of streets* for the whole or any part of their district (*d*).

All matters collected by the local authority or *contractor* in pursuance of this section (*e*) may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act: and any profits (*f*) thus made by a rural authority in respect of any contributory place shall be carried to the account of *the fund or rate* (*g*) out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the *local* authority or contractor in removing any matters by this section authorized to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding *five* pounds (*h*): Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance (*i*).

(*a*) It may be contended since the case of *Reg.* v. *Walker*, L. R. 10 Q. B. 355; 44 L. J. M. C. 169; 33 L. T. 167; 39 J. P. 438, that if this order be disobeyed the local authority may be indicted for a misdemeanor. This is not like orders

of the Local Government Board under the Poor Law Amendment Acts, which are enforceable by penalties according to 4 & 5 Wm. 4, c. 76, s. 99. But if the local authority be not liable to an indictment, they will be open to proceedings by *mandamus*, according to section 229, *post*. Note to Sect. 42.

(*b*) As to the removal of refuse from mews and other premises, see section 50, *post*, p. 60.

House refuse does not extend to dust and ashes, the exclusive produce of manufactories. *Lyndon* v. *Standbridge*, 26 L. J. Ex. 386; 2 H. & N. 45; 29 L. T. (o.s.) 111. And see *Law* v. *Dodd*, 17 L. J. M. C. 65; 1 Ex. 845; 10 L. T. (o.s.) 286, 309. Ashes arising from coals burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber and other materials for carrying on the business of a piano manufacturer, were held not to be house refuse in *Gay* v. *Cadby*, 2 C. P. D. 391; 46 L. J. M. C. 260; 36 L. T. (N.S.) 410; 41 J. P. 503. The local authority under an order of the Local Government Board are bound to remove refuse from a workhouse, even though such workhouse may by a local Act be rated at a less amount than other property in the parish or district. *Guardians of Holborn Union* v. *The Vestry of St. Leonards, Shoreditch*, 2 Q. B. D. 145; 46 L. J. Q. B. 36; 35 L. T. (N.S.) 400; 25 W. R. 40; 40 J. P. 740.

The local authority are not bound to remove articles improperly placed in a dust bin, such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." Where such articles were removed and were afterwards abstracted by the servants of a metropolitan vestry, it was held that the contractor for the removal of the house refuse was not entitled to compensation in respect of them. *Collins* v. *The Vestry of Paddington*, 48 L. J. Q. B. 345; 40 L. T. (N.S.) 843; 27 W. R. 504; 43 J. P. 367.

(*c*) See section 276, *post*.

(*d*) Note the distinction. The authority may be compelled to cleanse the streets, but may water the streets at their discretion.

(*e*) See *Collins* v. *The Vestry of Paddington*, *supra*.

(*f*) It is presumed that the contractor may contract to receive these matters for his own profit, and thereby reduce the amount otherwise payable to him.

(*g*) There is some little inaccuracy here. There is no account of any fund or rate in a rural authority's accounts. The expenses referred to would be general expenses, unless the Local Government Board make special order in the case, and the profit should be carried to the account of such expenses, as the case may be.

(*h*) As to the recovery of this penalty, see section 251, *post*.

(*i*) It is not enough that the matters are produced upon the premises; they must be intended to be removed for sale or for use, as for instance for manure, and until removed they must be kept so as not to create a nuisance; so that if the matters create a nuisance, which word must here, it is presumed, signify a public nuisance, they may be removed by the local authority or the contractor without obstruction.

Under 57 Geo. 3, c. 29, ss. 59, 60, the scavenger of a metropolitan district was entitled to take away from houses and premises "their soil, ashes, cinders, rubbish, dust, dirt and filth." It was held that these words included only such dust, &c., as were in the contemplation of the owner rubbish or refuse, and which he desired to dispose of in that character. Therefore, where brewers burnt coals in the process of brewing, which coals were only partially consumed by having once passed through the fires, and removed them mixed with the dust and ashes arising from the same fires to other premises occupied by them where they used them for heating water to cleanse their casks, it was held that the scavenger was not entitled to claim any of the articles so removed. *Filbey* v. *Combe*, 2 M. & W. 677; 1 Jur. 721.

43. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the Penalty on neglect of

Sect. 43. local authority to remove refuse, &c.

cleansing of earthclosets, privies, ashpits and cesspools, fail, without reasonable excuse, *after notice in writing* (*a*) from the occupier of any house within their district requiring them to remove any house refuse, or to cleanse any earthcloset, privy, ashpit or cesspool, belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding *five shillings* for every day during which such default continues after the expiration of the said period (*b*).

(*a*) It is not clear how this notice is to reach the local authority, who meet only at intervals. The suggestion which occurs is that it should be served upon their clerk at the offices of the board.

(*b*) See as to the recovery of this penalty, section 257, *post*. It is presumed that the justices can settle the amount of the penalty to be paid by the authority. The corporate property of the authority, whether urban or rural, would be liable to a distress for the payment of this penalty.

Power of local authority to make bye-laws imposing duty of cleansing, &c., on occupier.

44. Where the *local* authority do not themselves undertake or contract for—

The cleansing of *footways and pavements* (*a*) adjoining any premises,

The removal of *house refuse* (*b*) from any premises,

The *cleansing* of earthclosets, privies, ashpits and cesspools belonging to any premises,

they may make *bye-laws* imposing the duty (*c*) of such cleansing or removal, at *such intervals* as they think fit, on the occupier of any such premises.

An *urban* authority may also make *bye-laws* (*c*) for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and for the prevention of the keeping of animals (*d*) on any premises so as to be injurious to health.

(*a*) These are included under the term streets in section 42. The local authority may contract for the cleansing of the road, and make bye-laws for the cleansing of footways and pavements, but they cannot make bye-laws for the cleansing of the roads.

(*b*) As to what is house refuse, see section 42, note (*b*), *ante*, p. 55.

(*c*) As to the making, conformation, and enforcement of these bye-laws, see sections 182-4, and section 257. The bye-laws under this section are confined to the imposing of the duty. The section does not authorize any direction as to the manner of cleansing except so far as prescribing the intervals.

(*d*) See further the provisions of section 91, as to nuisances arising out of some of these matters.

In *Everett* v. *Grapes*, 3 L. T. (N.S.) 669; 25 J. P. 644, it was held under 5 & 6 Wm. 4, c. 76, s. 90, that a bye-law aimed against keeping pigs in a borough generally, instead of keeping them so as not to be a nuisance, was bad. But see *Wanstead Local Board of Health* v. *Wooster*, 55 L. T. 81; 37

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J. P. 403; 38 J. P. 21, where a bye-law preventing any occupier of a house keeping pigs within 100 feet of a dwelling-house was held to be valid on the ground that the doing so was so likely to be a nuisance, that it might be prohibited altogether. It was decided in the same case that the bye-law might require the removal of filth, &c., without any previous requisition by the local authority. But the principle of this decision was held to apply only to rural, and not to urban districts. *Heap* v. *Burnley Local Board*, 48 J. P. 359.

It is not necessary in order to procure a conviction under such a bye-law that a nuisance has been caused by the defendants' disobedience of the bye-law. *Tong Street Local Board* v. *Seed*, 39 J. P. 278. See further as to the keeping of pigs, section 47, sub-section (1), *post*, p. 58.

Power to provide receptacles for deposit of rubbish.

45. Any *urban* authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust, ashes, and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act.

As to the acquisition of land for the purposes of this section, see section 175, *post*; and as to the expenses, see section 207, *post*.

Houses to be purified on certificate of officer of health, or of two medical practitioners.

46. Where, on the certificate of the medical officer of health or of any *two medical practitioners* (*a*), it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing or purifying of any house or part thereof would tend to prevent or check *infectious* disease, the local authority shall give notice in writing (*b*) to the owner *or* occupier (*c*) of such house or part thereof to whitewash, cleanse or purify the same, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding *ten* shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed, cleansed or purified, and may recover in a summary manner the expenses (*d*) incurred by them in so doing from the person in default (*e*).

(*a*) They must be persons registered under 21 & 22 Vict. c. 90, s. 34.

(*b*) See as to this notice sections 266, 267, *post*. The authority may select either the owner (defined in section 4, *ante*, p. 6), or the occupier.

(*c*) See section 306, *post*, under which the owner may be empowered to enter to do these works when the occupier prevents him.

(*d*) See as to the recovery of the penalty and expenses, section 257, *post*. And see note (*e*) to section 21, *ante*, p. 38.

(*e*) Further provisions are contained in the clauses relating to nuisances, sections 91-7, *post*. See also the provisions of the Factory Acts, 1878 (41 Vict. c. 16), sections 33-7, and 1883 (*ante*, p. 23), which relate to certain factories and to bakehouses. 31 & 32 Vict. c. 130, also contains stringent provisions as to premises in a condition dangerous to health so as to be unfit for human habitation, and is printed in the Appendix.

Sect. 47.

Penalty in respect of certain nuisances on premises.

47. Any person who in any *urban* district—

(1.) Keeps any swine or pigstye in any dwelling-house, *or* so as to be a nuisance to any person (*a*); or

(2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice (*b*) to him from the urban authority to remove the same; or

(3.) Allows the contents of any watercloset, privy or cesspool, to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding *forty* shillings, and to a further penalty not exceeding *five* shillings for every day during which the offence is continued (*c*), and the urban authority *shall* (*d*) abate or cause to be abated every such nuisance, and may recover *in a summary manner* (*e*) the expenses incurred by them in so doing from the *occupier* (*f*) of the premises on which the nuisance exists.

(*a*) Keeping swine in a city is a nuisance at common law. (*Reg.* v. *Wigg*, Salk. 460.) This sub-section is expressed very generally, and seems to give a public remedy for a private grievance. The bye-law referred to in section 44, *ante*, p. 56, regulates the erection of a pigstye whether a nuisance to any person arises or not; but if a nuisance be caused, the bye-law will not protect the offender. See as to swine in the metropolis, 25 & 26 Vict. c. 102, s. 91. *Vestry of Chelsea* v. *King*, 34 L. J. M. C. 9.

The sub-section applies not merely to the keeping of swine in improper places, but to keeping in an improper manner. *Digby* v. *West Ham Local Board*, 22 J. P. 304. It is not necessary to prove that the keeping of the swine is injurious to health. *Banbury Sanitary Authority* v. *Page*, 8 Q. B. D. 97; 51 L. J. M. C. 21; 45 L. T. (N.S.) 759; 30 W. R. 415; 46 J. P. 184. It is clear swine are not to be kept in a dwelling-house at all.

(*b*) See as to this notice, which, as it seems, should be given by the clerk of the authority, sections 266, 267.

(*c*) See section 251, as to the recovery of the penalty. It would seem that the continuance referred to must be *after the conviction*, otherwise there is no date from which the time is to be calculated under sub-sections 1 and 3.

(*d*) This appears to be a peremptory direction to the urban authority, the default of which may bring them under the operation of section 299.

(*e*) As to the recovery of these expenses, see note (*e*) to section 21, *ante*, and section 251, *post*.

(*f*) Note here that the recovery is to be from the occupier; no recourse is given against the owner.

It will be considered that this section applies to such matters as would generally form nuisances to which section 91, *post*, and the subsequent sections would apply. Then recourse may be had against the owner as well as the occupier. The above section does not require proof of any injury to health. See *Banbury Sanitary Authority* v. *Page*, *sup.*

Offensive Ditches and Collections of Matter.

Provision for obtaining order

48. Where any watercourse or open ditch lying near to or forming the boundary between the district of any *local* authority and any adjoining district is foul and offensive, so as injuriously to

affect the district of such local authority, *any justice* having jurisdiction in such adjoining district (*a*) may, on the application of such local authority (*b*), summon the *local* authority of such adjoining district to appear before *a court of summary jurisdiction* (*c*) to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such court to be necessary; and such court, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such *order* (*d*) with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such court may seem reasonable. Sect. 48. for cleansing offensive ditches lying near to or forming the boundaries of districts.

(*a*) As to the jurisdiction of justices in rural sanitary districts, see 30 & 31 Vict. c. 106, s. 27, set out *ante*, p. 22.

(*b*) It is presumed that this application must be made by an officer of the local authority, who will be directed to make such application by order of the board and entered on the minutes. It cannot be necessary that the application should be under seal. As to the appearance of the authority summoned, see section 259, *post*.

(*c*) See the definition in section 4, *ante*, p. 15.

(*d*) This order will justify the entry on any lands when the entry may be necessary for the execution of the order. As to compensation, see section 308, *post*. As to the time allowed for appealing from the order, see section 269, *post*, and *Reg.* v. *The Barnet Rural Sanitary Authority*, 1 Q. B. D. 558; 45 L. J. M. C. 105; 35 L. T. (N.S.) 362; 41 J. P. 6.

49. Where in any *urban* district it appears to the inspector of nuisances that any accumulation of manure, dung, soil or filth, or other offensive or noxious matter ought to be removed, *he* shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same (*a*); and if such notice is not complied with within twenty-four hours from the service thereof, the manure, dung, soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority (*b*), and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed. Removal of filth on certificate of inspector of nuisances.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in *a summary manner* (*c*) from the person to whom the accumulation belongs, or

Sect. 49. from the occupier of the premises, or (where there is no occupier) from the *owner* (*d*).

(*a*) A pier and harbour company in whom a harbour was vested, were held bound under 18 & 19 Vict. c. 121, s. 12, to remove sea-weed which by the action of the sea was drifted into the harbour, and being left there became a nuisance. *The Proprietors of Margate Pier and Harbour* v. *The Town Council of Margate*, 20 L. T. (N.S.) 564; 33 J. P. 437. An accumulation of stable dung which may be dealt with under this section may also be within the provisions of sections 91-4, *post*. *Smith* v. *Waghorn*, 27 J. P. 744.

(*b*) No express power is given in this clause to the officer to enter and remove the offensive matter, but it is implied, otherwise there would be no expenses in the execution of the section. A similar clause existed in 11 & 12 Vict. c. 63, s. 59, and in 18 & 19 Vict. c. 121, s. 18; but the latter Act took effect after an order of justices for the abatement of a nuisance. The present Act adopts the provision in the latter Act for the disposal of the surplus, and not that of the earlier Act, so that the owner may sometimes be benefited by the action of the local authority. As to the sale of the matters, see section 101, *post*. It must be noticed that a sale is not absolutely required, but they may be otherwise disposed of, perhaps by deposit on lands of the local authority, on payment of the value minus the cost of removal.

(*c*) See as to the recovery of these expenses, note (*e*) to section 21 and section 251, *post*.

(*d*) See the definition in section 4, *ante*, p. 6.

Periodical removal of manure from mews and other premises.

50. Notice may be given by any *urban* authority (by public *announcement* (*a*) in the district or otherwise) for the periodical removal of manure or other refuse matter from mews, stables or other premises; and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding *twenty shillings* (*b*) for each day during which such manure or other refuse matter is permitted to accumulate.

(*a*) This word was used in 29 & 30 Vict. c. 90, s. 53, from which this clause is taken. It is of no definite meaning. An advertisement in the district of the local authority, and printed placards affixed to the walls of mews, stables or other places, seem to satisfy the term.

(*b*) As to the recovery of this penalty, see section 251, *post*. The accumulation referred to must be after the notice.

Water Supply.

Powers of Local Authority in relation to Supply of Water.

General powers for supplying district with water.

51. Any urban authority *may* (*a*) provide their district or any part thereof, and any rural authority *may* (*a*) provide their district or any contributory place therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes (*b*), and for those purposes or any of them may—

(1.) Construct and maintain *waterworks* (*c*), dig wells and do any other necessary acts; and Sect. 51.

(2.) Take on lease or hire any *waterworks* (*c*), and (with the sanction of the Local Government Board) purchase any *waterworks* (*c*), or any water or right to take or convey water, either within or without their district (*d*), and any rights, powers, and privileges of any *water company* (*e*); and

(3.) Contract with any person for a supply of water.

(*a*) These words are in themselves permissive and enabling, but if the local authority do not avail themselves of this power where water is required, and they can procure it, they will be in default, and proceedings may be taken under section 299, *post*.

The Public Health (Water) Act, 1878 (which is set out at length, *post*), provides by section 3, that it shall be the duty of every rural sanitary authority to see that every occupied dwelling house within their district has within a reasonable distance an available supply of water sufficient for the consumption and use for domestic purposes of the inmates of the house. It may therefore be the duty of a rural sanitary authority to provide a water supply. The same section provides that nothing in the Act is to be deemed to relieve the authority of their duty to provide a water supply under the Act of 1875. Section 11 of the Act of 1878 provides that the Local Government Board may, if they think fit, by order invest any urban sanitary authority with all or any of the powers and duties which are by that Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

(*b*) By 11 & 12 Vict. c. 63, s. 75, the power was limited to private purposes. This section extends it to public purposes also, but this general language must be qualified by the nature and extent of the district.

(*c*) See the definition of *waterworks* in section 4, *ante*, p. 14. This sanction of the Local Government Board is introduced for the first time, and will operate to protect both the owners of water rights and the interests of the ratepayers. As this section enables the local authority to purchase, so section 63 provides for the sale to them.

An agreement (sanctioned by Act of Parliament), was entered into between two water companies, by which it was agreed that company A. should take over the works, provide for a mortgage debt, and pay interest on the shares of company B. This transaction was carried into effect by an indenture of January, 1857, which provided that if company A. (or their intended assignees, the Corporation or Local Board of Health), being desirous of becoming the absolute and unrestricted owners of the works of company B. subject only to the mortgage debt, should, "on or before any 25th December, after having given to company B. six months' previous notice of their desire to avail themselves of the option thereby given, pay unto company B." £46,246, the amount of their share capital, the party so paying should become absolutely entitled to the works. In June, 1870, the corporation who had acquired the interest of company A. gave notice to company B. of their intention to pay the £16,246 on the 25th December following, but were unable from want of funds to carry out the purchase. In June, 1871, they again gave notice that they would pay the money on the 25th December, 1871. Held, that the corporation by giving the first notice and failing to act upon it, had not lost the right given to them by the deed of January, 1857, of purchasing after six months' notice, on or before any 25th of December. *Ward* v. *Wolverhampton Waterworks Company*, L. R. 13 Eq. 243; 41 L. J. Ch. 308; 25 L. T. (N.S.) 487; 20 W. R. 85.

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40 & 41 Vict. c. 31, provides that the construction or erection of reservoirs or other works of a permanent character for the supply of water to any sanitary or other local authority or water company, shall be deemed to be an improvement of land within the meaning of 27 & 28 Vict. c. 114, s. 9, and shall be sanctioned by the commissioners if it can be shown to their satisfaction that such reservoirs or works will effect a permanent yearly increase in the value of settled lands, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of such works is to be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid (section 5). Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under the Act, may enter into any agreement for the supply of water to any sanitary or other local authority, for any term not exceeding the number of years during which the cost of the improvement or any part of it is made a charge upon the estate. Provided that every such agreement be approved of by the commissioners, and that no premium or benefit in the nature of a premium be reserved hereby by the landowner (section 6). The commissioners referred to are the Inclosure Commissioners, now the Land Commissioners under the Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 48.

As to the rating of waterworks provided by a local authority, see *Reg.* v. *West Middlesex Waterworks Company*, 28 L. J. M. C. 135; 32 L. T. (O.S.) 388; *Chelsea Waterworks Company* v. *Overseers of Putney*, 8 W. R. 607; *The Mayor of Worcester* v. *The Droitwich Assessment Committee*, 2 Ex. D. 49; 46 L. J. M. C. 241; 36 L. T. (N.S.) 186; 25 W. R. 336; 41 J. P. 355. And see also *Peterborough* (*Mayor of*) v. *Stamford Union*, 31 W. R. 949.

(*d*) It will be seen that section 332, *post*, prevents the water rights of proprietors from being injuriously affected without their consent; but as section 176 enables the provisions of the Lands Clauses Act to be put in force, it is presumed that when any water rights would be so affected, they may be purchased compulsorily. Section 175 enables land and certain obstructions to the supply of water to be purchased.

In *Bush* v. *The Trowbridge Waterworks Company*, L. R. 10 Ch. 459; 44 L. J. Ch. 645; 33 L. T. (N.S.) 137; 23 W. R. 641; 39 J. P. 660, it was held that the abstraction by a waterworks company from a stream, did not entitle a riparian proprietor below to require the company to treat for the purchase of his interest in the stream, but only entitled him to compensation as for land injuriously affected. But when a company had power to divert the whole of a stream, and gave notice of their intention to do so, it was held that they were bound to purchase the entire interest of the riparian proprietors below. *Stone* v. *The Mayor, &c., of Yeovil*, 2 C. P. D. 99; 46 L. J. C. P. 137; 36 L. T. (N.S.) 279; 25 W. R. 240; 42 J. P. 212, following *Ferrand* v. *The Corporation of Bradford*, 21 Beav. 412. It is to be observed that a riparian owner has merely a right to the use of the water as it passes through his property. He cannot divert it into a reservoir for the purpose of disposing of it to the inhabitants of a town. *Swindon Waterworks Company* v. *Wilts and Berks Canal Navigation Company*, L. R. 7 H. L. 697; 45 L. J. Ch. 638; 33 L. T. (N.S.) 513; 40 J. P. 804. And a local board possessing land on the bank of a stream have no greater right. *Owen* v. *Davis*, W. N. 1874, p. 175. A riparian owner cannot, except as against himself, confer on another person any right to use the water, and such user is wrongful if it affects the rights of other proprietors. *Ormerod* v. *The Todmorden Mill Company*, 11 Q. B. D. 155; 52 L. J. Q. B. 445; 31 W. R. 759; following *The Stockport Waterworks Company* v. *Potter*, 31 L. J. Ex. 9. But an injunction will not be granted to restrain such user unless damage be proved. *Kensit* v. *The Great Eastern Railway*, 23 Ch. D. 566; 48 L. T. (N.S.) 784.

Where a waterworks company were empowered by local Acts to take and use certain water on condition of their making a compensation reservoir for storing the water during floods for the benefit of mill owners lower down, it was held

that they were bound to return the water from such reservoir without fouling it. *Clowes* v. *The Staffordshire Potteries Company*, L. R. 8 Ch. 126; 42 L. J. Ch. 107; 27 L. T. (N.S.) 521; 36 J. P. 760; 21 W. R. 32. Note to Sect. 51.

As regards the abstraction of underground streams, see the notes to section 17, *ante*, p. 32.

(*e*) See the definition in section 4, *ante*, p. 14.

Restriction on construction of waterworks by local authority.

52. Before commencing to construct *waterworks* (*a*) within the limits of supply of any water company *empowered by Act of Parliament or any order confirmed by Parliament* (*b*) to supply water, the local authority shall give written notice to every water company (*c*) within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are *able and willing* (*d*) to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are *reasonable* (*e*), or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act (*f*).

(*a*) See note (*c*) to last section.

(*b*) In 11 & 12 Vict. c. 63, s. 75, the word *established* only was used, and though the law officers of the Crown had advised that this meant established by Act of Parliament, that opinion had not been judicially confirmed. The text, however, confirms that view for the future. It is presumed that the Act of Parliament referred to is a special Act, and that the order is a provisional order of the Board of Trade respectively applying to the particular company.

(*c*) See section 266, as to this notice. If notice be not given, the local authority will be liable to an injunction from the High Court of Justice. A water company is not entitled to a notice under this section unless it is able and willing to supply water within the district. *Richmond Waterworks Company* v. *Vestry of Richmond, infra.*

There are many cases where companies have been established for the supply of water, but have not acted on their powers or have failed to carry their powers into effect. Nevertheless, it seems that notice should be given to them.

The water company must be such a company as is previously mentioned in the section, for only such a company can be said to have limits of supply.

(*d*) A waterworks company is not *able and willing* within the meaning of this section, unless it has both the necessary powers and the necessary supply of water. The R. company had the necessary powers but no water, and the S. company had the necessary supply of water, but no power within the district. The R. company sold its plant to the S. company, and certain members of company S. bought all the shares of company R. with the intention of allowing company S. to exercise the powers of company R. It was held that the powers could not be so delegated, and that neither company was *able and willing*

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within the meaning of the Act. *Richmond Waterworks Company* v. *Vestry of Richmond*, 3 Ch. D. 82; 45 L. J. Ch. 441; 34 L. T. (N.S.) 480.

(*e*) The arbitrator must determine what are reasonable purposes. The term is in itself somewhat vague.

(*f*) See section 179, *post*.

As to construction of reservoirs.

53. At least *two* months (*a*) before commencing to construct under the provisions of this Act (*b*) any reservoir (other than a service reservoir or tank which will hold not more than *one hundred thousand gallons*) (*bb*) the local authority shall give notice (*c*) of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed (*d*).

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority (*e*) at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as herein-after mentioned, unless such objection is withdrawn (*f*).

The Local Government Board may, on application (*g*) of the local authority, appoint an inspector to make inquiry (*h*) on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an *order* disallowing or allowing with such modifications (if any) as they may deem necessary the intended work (*i*).

(*a*) These must be calendar months. (See 13 & 14 Vict. c. 21.) This section does not prevent the authority from obtaining the requisite power of purchasing land for the purpose. But it is advisable that the decision of the Local Government Board should, when possible, be obtained in the first place as to the propriety of the proposal.

(*b*) It is presumed that these words are to be construed so as to apply to powers acquired before the Act was passed (see section 326), but the point is far from clear.

(*bb*) See the Waterworks Clauses Act, 1863, in the Appendix, for the provisions as to the protection of reservoirs. See also section 68, *post*.

(*c*) See as to this notice, sections 266, 267. If this notice be not given proceedings may be stayed by injunction, and the expenditure would be unlawful. If the land had not been already obtained, probably it could not be legally acquired.

(*d*) Generally the newspaper circulating in the district of the local board will suffice, but if the reservoir is to be out of the district, it may be necessary to advertise in a different newspaper.

(*e*) Section 267 provides for the service of notices, but appears to apply rather to notices *by* the local authority than to notices *to* them. The person affected must, as it seems, be so affected in his land or some interest therein.

(*f*) Although there be no notice of objection, if the local authority require a loan, they must obtain the sanction of the Local Government Board to the work. This sanction will not be given without due enquiry. See section 233, *post*, and the notes thereon.

(*g*) This application may be made in writing, signed by the clerk of the authority on folio foolscap paper. Note to Sect. 53.

(*h*) As to enquiries by the Local Government Board, see section 293, *post*.

(*i*) It does not appear that this order can deal with the interests of persons affected by the works, but their interests may be such as to disallow the proposal.

Power of carrying mains.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying *water mains* within or *without their district* (*a*) as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force (*b*).

(*a*) These words are new, and enable the water to be brought from any distance to the district.

(*b*) See section 16, *ante*, p. 30, as to sewers within the district, and section 32, *ante*, p. 47, as to sewers without the district.

As to supply of water.

55. A local authority *shall* provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water (*a*); and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water *may* be constantly laid on at such pressure as will carry the same to the top storey of the highest dwelling-house within the district or part of the district supplied (*b*).

(*a*) This is compulsory upon the authority, and as to their default herein, see section 299, *post*. Compare also the provisions of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 35. As to the purposes for which the authority are bound to supply water, see the Waterworks Clauses Act, 1847, section 53, and the Waterworks Clauses Act, 1863, sections 12, 13. The sections are set out in the Appendix.

In a recent case the defendants were empowered by a special Act (32 & 33 Vict. c. cx.), incorporating the Waterworks Clauses Act, 1847, with the exception of certain provisions, to supply water for domestic use within the limits and from the sources described by the Act. By section 66 of the special Act the defendants were entitled to prescribe the material to be used for service pipes by persons supplied with water, and by bye-laws the defendants prescribed that the material might either be lead or cast-iron. Service pipes of lead were, upon the application of the landlord of the plaintiff's house and of the plaintiff, laid down by the defendants from their mains to the house at the expense of the landlord and of the plaintiff. The service pipes when laid belonged to the consumer of the water supplied through them. By the Waterworks Clauses Act, 1847, section 35, "the undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act who shall be entitled to demand a supply and shall be willing to pay water-rate for the same." Water which was pure and wholesome in the mains of the defendants, was supplied by them to the plaintiff, but in its passage from the mains through the service pipes it was contaminated by the lead, and he, using the water, suffered from lead poisoning. In an action against the defendants for injuries sustained from impure and unwholesome water, held, that the plaintiff had no cause of action. *Milnes* v. *The Mayor of Huddersfield*, 10 Q. B. D. 124; 52 L. J. Q. B. 64; 47 L. T. (N.S.) 697; 31 W. R. 568.

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(*b*) It is, however, at the discretion of the local board whether they will act upon this provision, and they will be guided by the state of the district and the facilities for obtaining water, so as to be able to raise it to the requisite height. It is to be observed that sections 35 and 42 of the Waterworks Clauses Act, 1847, as to high pressure are not incorporated into this Act. The local authority are not therefore under any obligation to supply water at high pressure by reason of these sections. See *Purnell* v. *The Wolverhampton New Waterworks Company*, 10 C. B. (N.S.) 576; 4 L. T. (N.S.) 513.

Power to charge water rates and rents.

56. Where a local authority supply water to any premises they *may* (*a*) charge in respect of such supply a water rate to be assessed or the *net annual value* (*b*) of the premises ascertained in the manner by this Act prescribed with respect to general district rates (*c*); moreover they may enter into agreements (*d*) for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates (*e*).

(*a*) The Public Health (Water) Act, 1878, section 10, provides that "when a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any of the persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place." As to the power of an authority to charge water rates or water rents in respect of water supplied from standpipes, see sections 9 and 11 of the same Act, which is set out at length, *post*.

(*b*) See the definition of *net annual value* in section 4, *ante*, p. 8. This definition precludes the difficulties of construction which arose as to the meaning of *annual value* in *Warrington Waterworks Company* v. *Longshaw*, 9 Q. B. D. 145; 51 L. J. Q. B. 498; 46 L. T. (N.S.) 815; 31 W. R. 11; 46 J. P. 773; *The New River Company* v. *Mather*, L. R. 10 C. P. 442; 44 L. J. M. C. 105; 32 L. T. (N.S.) 658; 39 J. P. 614; and *Dobbs* v. *The Grand Junction Waterworks Company*, 10 Q. B. D. 337; 52 L. J. Q. B. 90; 31 W. R. 359. For the calculation of the annual value where an owner is assessed, see *Smith* v. *Birmingham* (*Corporation of*), 31 W. R. 788; 11 Q. B. D. 195; 52 L. J. M. C. 81.

(*c*) As to the manner of making general district rates, see section 211, *post*.

(*d*) These should be in writing and duly executed by the two parties under seal. See section 58, *post*, p. 68, as to agreements to supply water by measure.

(*e*) See next section. Observe the distinction between water rents which are payable under a special agreement, and water rates which are chargeable on the net annual value of the premises without any such agreement. Another example of a water rent will be found in section 58, *post*, p. 68.

Incorporation of certain provisions of Waterworks Clauses Act, 1847.

57. For the purpose of enabling any local authority to supply water, there shall be incorporated with this Act the Waterworks Clauses Act, 1863 (*a*), and the following provisions of the Waterworks Clauses Act, 1847 (*b*); (namely,)

"With respect" (where the local authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes" (*c*); and

"With respect to the communication pipes to be laid by the undertakers;" and

"With respect to the communication pipes to be laid by the inhabitants;" and

"With respect to waste or misuse of the water supplied by the undertakers;" and

"With respect to the provision for guarding against fouling the water of the undertakers;" and

"With respect to the payment and recovery of the water rates" (*d*).

Provided—

That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively, shall apply only in districts, or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorized or directed by any of the said incorporated provisions to be settled by an inspector or two justices, shall be settled by a *court of summary jurisdiction* (*e*); and

That section *forty-four of the Waterworks Clauses Act*, 1847 (*f*), shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner, or reputed owner, of any such house, or of the agent of such owner," were omitted therefrom;

And any rent for pipes and works paid by an occupier under that section *may* be deducted by him from any rent from time to time due from him to such owner (*g*).

(*a*) That is 26 & 27 Vict. c. 93. See the statutes in the Appendix.

(*b*) That is 10 & 11 Vict. c. 17, ss. 28—34, ss. 44—53, ss. 54—60, ss. 61—67, and ss. 68—74. These clauses are printed in the Appendix. With respect to the incorporation of parts of Acts by reference to the headings, see *Ferrar* v. *The Commissioners of Sewers of London*, L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. (N.S.) 295; 17 W. R. 709; *Hammersmith Railway Company* v. *Brand*, L. R. 4 H. L. 171; 38 L. J. Q. B. 265; *Dungey* v. *The Mayor, &c., of London*, 38 L. J. C. P. 298; 20 L. T. (N.S.) 921; 17 W. R. 1106; *Reg.* v. *St. Luke's, Chelsea*, L. R. 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. (N.S.) 914; 20 W. R. 209; 36 J. P. 245.

(*c*) A waterworks company having laid down a pipe under the surface of a highway, a leak occurred and the water oozed out; a builder, engaged by the owner of the soil of the highway, in making a tunnel under the road, suffered

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damage and loss by reason of the leakage. It was held that he had no legal right of action against the company. *Cattle* v. *The Stockton Waterworks Company*, L. R. 10 Q. B. 453; 44 L. J. Q. B. 139; 33 L. T. (N.S.) 475; 39 J. P. 791. And see the cases cited in the notes to the Waterworks Clauses Act, 1847, sections 28—34.

(*d*) Provision for the recovery of water rates is found in 26 & 27 Vict. c. 93, s. 21, in addition to those in 10 & 11 Vict. c. 17.

(*e*) See the definition in section 4, *ante*, p. 15.

(*f*) See in the Appendix, *post*.

(*g*) Query whether this will overrule any covenants by lessees to bear charges leviable upon lessors, as to which see note on section 226, *post*. The language is only permissive, and may, possibly, be provided for by express covenant.

Power to supply water by measure.

58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of *rent* (*a*) or otherwise for every meter provided by them;

They shall at all times, at their own expense, keep all meters and other instruments for measuring water, let by them for hire to any person, in proper order for correctly registering the supply of water, and in default of their so doing, such person shall not be liable to pay rent for the same during such time as such default continues.

The local authority shall, for the purposes aforesaid, have access to and be at liberty, at all reasonable times, to remove, test, inspect, and replace any such meter or other instrument.

(*a*) This agreement must be under seal, and must provide for the payments for the supply of the water, for the use of the meter, and for the penalties in respect of the breaches mutually. It does not appear that there is any summary means of recovering the rent for the meter, but the amount due from time to time will be dealt with as rent due between landlord and tenant, and must be recovered by the ordinary civil process, though apparently there cannot be any distress.

This provision for the supply of water by measure is new, so far as the previous Sanitary Acts went, though it is found in many Local Water Acts.

The S. waterworks company was authorized to receive payment by measure, and not by a rate for water supplied to fixed baths in private houses. There was no express provision in their special Acts or in the Waterworks Clauses Acts as to how the water for such a purpose was to be measured, or whether the company or the consumer was to bear the cost of providing a meter for measuring the water, but by the Waterworks Clauses Act, 1863, section 14, when the company supply water by measure they may let to a consumer a meter for such remuneration as they may agree upon. Held that a consumer taking water from the company for a fixed bath in his private house, was bound at his own expense to measure the water so used by some automatic and self-registering meter or other instrument, or in some other equally accurate way, and to record the amount from time to time taken. *Sheffield Waterworks Company* v. *Bingham*, 48 L. T. (N.S.) 604; 52 L. J. Ch. 624. The learned judge who decided this case (PEARSON, J.) expressly distinguished it from the decisions of the Queen's Bench Division in the *Sheffield Waterworks Company* v. *Carter*, and *The Same* v. *Brooks*, 8 Q. B. D. 632; 51 L. J. M. C. 97; 30 W. R. 889; 46 J. P. 548. In the first of these cases the facts were as follows. The special Act provided for the supply of water to the inhabitants of the district for "family use" at certain rates calculated on the rental of the house supplied. The Act contained further provisions for the supply of water to schools, manufactories, &c., and

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for purposes other than family consumption, and for baths, &c., and for the purposes of any trade or business whatsoever, at certain rates per thousand gallons. The supply of water having been held obligatory upon the company unless prevented by causes beyond their control, it was held that, there being no provision in the special Act throwing upon the consumer the obligation of providing a meter to measure the water supplied for the purposes of a bath, no such obligation could be implied from the 14th section of the Waterworks Clauses Act, 1863, incorporated with the special Act, the effect of which is above stated. In the second case the occupier of a house within the district had a bath connected by means of a pipe with the house cistern, to which water was conveyed by the company's main for family use. The company required him to put up a meter for the purpose of measuring the water used for the bath, but he refused to do so. He had paid to the company in advance the proper amount in respect of the water supplied for family use for the quarter ending 29th September, but had not paid or tendered any sum in respect of the water supply to the bath for the same period. The company, in consequence of his refusal to put up a meter or disconnect the bath, cut off the communication pipe from their main to his house upon the 20th September. On the 29th September, having cut off the pipe connecting the cistern with the bath, but not the waste or outlet pipe from the bath, he gave notice to the company of what he had done, and paid to the company in advance the proper amount for the supply of water for family use during the ensuing quarter, but did not restore the communication pipe between the company's mains and his cistern. The company refused to restore the supply, on the ground that he had not cut off the waste pipe from the bath, which he refused to do. The supply of water was not renewed till the 4th November, when the company restored the communication pipe under protest. It was held that the company were not entitled to insist on the consumers providing a meter, that they were not liable to a penalty under the Waterworks Clauses Act, 1847, section 43, for not supplying water during the period from the 20th to the 29th September, inasmuch as no tender or payment in respect of the water supply to the bath for such period had been made; but that they were liable to a penalty in respect of the period subsequent to the 29th September, and that they had no right to refuse the supply of water after that date; and that they were not justified in cutting off the supply, and were, therefore, not entitled to require the consumer to renew the communication. These cases show that the agreement to supply water by measure under the above section, must contain express stipulations as to the providing and the rent of the meter. In the absence of such stipulations, it is submitted that the consumer cannot be compelled to provide or to pay rent for a meter, though he may be bound to provide some automatic and self-registering instrument to keep a record of the amount of water used. And see *Weaver* v. *Cardiff* (*Corporation of*), 48 L. T. (N.S.) 906.

When water is supplied by measure it is the subject of larceny. *Ferens* v. *O'Brien*, 11 Q. B. D. 21; 52 L. J. M. C. 70; 31 W. R. 643.

Register of meter to be evidence.

59. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be *primâ facie* evidence of the quantity of water consumed;

And if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a *court of summary jurisdiction* (*a*),

And such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding (*b*).

(*a*) See the definition in section 4, *ante*, p. 15.

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(*b*) These costs will be a civil debt within the meaning of the Summary Jurisdiction Act, 1879, sections 6, 35, and 47, and payment of them may be enforced accordingly. See section 251, *post*, and the notes thereon.

Penalty for injuring meters.

60. If any person wilfully or by culpable negligence injures, or suffers to be injured, any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding *forty shillings* (*a*), and the local authority may in addition thereto recover the amount of any damage sustained (*b*).

The existence of artificial means, under the control of the consumer, for causing any such alteration, prevention, abstraction, or use, shall be *evidence* (*c*) that the consumer has fraudulently effected the same.

(*a*) See as to the recovery of penalties, section 251, *post*. As to the other right or remedy of the local authority, that will be under the agreement, as to which see section 58 and note (*a*) thereto. There may be a criminal remedy for larceny of the water under certain circumstances. See *Ferens* v. *O'Brien*, *ante*, p. 69.

(*b*) The amount of the damage is not a penalty, and payment of it will apparently have to be enforced as a civil debt under the Summary Jurisdiction Act, 1879, if it is recovered at the same time and in the same proceeding as the section appears to intend.

(*c*) This is only *primâ facie*, not conclusive evidence, or proof.

Power to supply water to authority of adjoining district.

61. Any *local* authority for the time being supplying water within their own district may, with the sanction of the Local Government Board (*a*), supply water to the local authority of any adjoining district, on such terms as may be agreed on between such authorities, or as, in case of *dispute* (*b*), may be settled by arbitration in manner provided by this Act.

(*a*) In *The Halifax Corporation* v. *The Local Board of Soothill Upper*, 31 L. T. (N.S.) 6, a corporation had obtained parliamentary power to collect all the water from the gathering grounds of a district, but were bound to supply to the township of T. not less than 25,000 gallons, nor more than 75,000 gallons of water per day at a fixed price, the amount to be supplied between the maximum and the minimum to be at the option of the purchaser. It was held on demurrer that the township of T. might enforce the supply of more than 25,000 gallons per day for the purpose of selling part of it at a profit to a neighbouring township. This case was decided before the present Act came into operation, and the foregoing section, which is altogether new, recognizes the power of one local authority to supply another with water. The Local Government Board will have to take care that the authority can properly spare the water and prevent improvident arrangements in this respect. The application to the board must be made in writing under the hand of the clerk of the board and on folio

must be made in writing under the hand of the clerk of the board and on folio foolscap paper. And the agreement between the two authorities should be under seal.

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(*b*) As this is a voluntary arrangement, it seems somewhat difficult to understand how there can be any dispute, but as to the provision for arbitration, see section 179, *post*.

Local authority may require houses to be supplied with water in certain cases.

62. Where, on the report of the surveyor (*a*) of a *local* (*b*) authority, it appears to such authority that any house within their district is without a proper supply of water (*c*), and that such a supply of water can be *furnished thereto* at a cost not (*d*) exceeding the water rate authorized by any local Act in force within the district, or where there is not any local Act so in force, at a cost not exceeding *twopence* a week, or at such other cost as the Local Government Board may, on the application of the local authority (*e*), determine under all the circumstances of the case to be reasonable (*f*) the local authority shall give notice in writing to the *owner* (*g*), requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district (*h*); and water rates (*i*) may be made and levied on the premises by the authority or company which furnishes the supply, and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the local authority in doing any such works may be recovered in a *summary manner* (*k*) from the *owner* of the premises, or may by order of the local authority be declared to be *private improvement expenses* (*l*).

(*a*) See the definition as to the surveyor of a rural authority in section 4, *ante*, p. 5.

(*b*) This section applies both to urban and rural districts. It is not repealed by the Public Health (Water) Act, 1878, *post*, p. 446, although that Act gives increased powers to compel the providing of a water supply to houses in rural districts. *Colne Valley Waterworks Co.* v. *Treharne*, 50 L. T. (N.S.) 617; 48 J. P. 279.

(*c*) These words have been read in the former Public Health Acts, as signifying a supply of proper water, so that a well containing a supply of water, but polluted, is not a proper supply of water. This is probably a correct interpretation of these words, though of course they primarily apply to the case of a mere deficiency of water. See the provision as to lodging-houses in section 81, *post*.

(*d*) The cost referred to in this section is the cost of the supply of water, and is quite distinct from the expense of bringing the supply to the premises. It is further to be observed that this section appears only to apply when there is a water supply which can be obtained from the mains of a water company or

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of the local board. This construction of the section results from the use of the words *furnished thereto*, which would be inapplicable to the case of a well, &c., provided at a distance from the house; and at the latter end of the section it is provided that water rates may be made or levied on the premises by the authority or company which supplies the water. See the evidence of the present Secretary of the Local Government Board given before a select committee of the House of Commons in 1878, at pp. 11, 12, of the report.

(*e*) See section 61, note (*a*), *ante*, p. 70, as to the mode of making this application.

(*f*) This alternative is new. Although inconvenient, it appears to be necessary that the Local Government Board should make an order separately for every case, though probably several may be embraced in the same document. The Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25), s. 8, provides that where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875, to determine what is a *reasonable cost* within the meaning of that section, the Board may for that purpose fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order, shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorized by such general scale of charges.

(*g*) See the definition in section 4, *ante*, p. 6.

(*h*) This is new. The contract must be framed generally to meet various cases. It is not likely that a contract can be made for a single case. See section 173, *post*, as to the making of contracts.

(*i*) As to how water rates may be made and levied, see 10 & 11 Vict. c. 17, ss. 68—74, and 26 & 27 Vict. c. 93, s. 21, incorporated herewith by section 57, *ante*, p. 66, and set out in the Appendix.

(*k*) See section 251, *post*. As to the definition of *owner*, see the definition in section 4, *ante*, p. 6. It will be seen that though the occupier may be required to pay for the supply of the water, the owner is to pay the cost of the works. As to the cases in which the owner may be compelled to pay the water rates, see 10 & 11 Vict. c. 17, s. 72, in the Appendix. No preliminary determination of the local authority as to the necessity for the supply or the works need be proved in any proceeding to recover the expenses. *Cabellero* v. *Lewis*, 38 J. P. 614.

(*l*) See as to these expenses, section 213, *post*. An appeal against the order lies to the Local Government Board; see section 268, *post*.

Powers of water company for supplying water to local authority.

63. Any water company may contract to supply water, or may lease their waterworks to any *local* authority; and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862 (*a*), of a special resolution of the members passed in manner provided by that Act (*b*), and in the case of any other company of a resolution passed by *three-fourths* (*c*) in number and value of the members present, either personally or by proxy, at a meeting specially convened, with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights, powers, and privileges, and all or any of the waterworks, premises, and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

and 168, *post*. It will be remembered that section 51, *ante*, p. 60, enables the local authority to purchase. This section enables them to sell. Note to Sect. 63.

(*b*) See 25 & 26 Vict. c. 89, s. 51.

(*c*) The Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 63, required a resolution of three-fifths. The directors may contract or lease of themselves; but can only sell with consent of the shareholders.

Vesting of public cisterns, &c., in local authority.

64. All existing *public* cisterns, pumps, wells (*a*), reservoirs (*b*), conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants of the district of any local authority, *shall* (*c*) vest in and be under the control of such authority, and such authority *may* (*d*) cause the same to be maintained and plentifully supplied (*e*) with *pure and wholesome water* (*f*), or may substitute (*g*), maintain and plentifully supply *with pure and wholesome water* (*f*), other such works equally convenient; they may also (subject to the provisions of this Act) (*h*) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use (*i*).

(*a*) A well situated on private ground, the water of which had been used for domestic purposes gratuitously by the inhabitants in the vicinity for the prescriptive period, was held to be a public well within the meaning of the corresponding provisions of the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101), s. 89, sub-sect. 4, and it was also held that the local authority might enter upon the land and do all acts to the well for continuing and maintaining it, which the inhabitants might have done before, and that although there might be a company with a vested right to supply the inhabitants with water. *Smith* v. *Archibald*, 5 Ap. Cas. 489. The facts in that case were shortly as follows. Situated in one corner of a field in the parish of D. was a well. From the well to the entrance of the field there was a footpath, and from that entrance to the public road going through the village of D. there was a cart road. The inhabitants of D. had for the prescriptive period used the water of the well for domestic purposes, and had, among other acts done to the well, cradled it with stones at their own expense. The local authority acting under the section already mentioned, caused the well to be covered in with an iron plate, and placed therein a hand pump with the avowed object of keeping the well free from pollution. The proprietor of the field, alleging the well to be his private property, instituted proceedings to compel the authority to remove the cover and pump. But it was held by the House of Lords, affirming the decision of the court of session, that the well was a public well within the meaning of the statute, and that the local authority, as representing the inhabitants, had not done anything in excess of their powers.

(*b*) In the *Leadgate Local Board* v. *Bland*, 45 J. P. 526, which was a case tried at Durham assizes, Kay, J., held that a natural pond was a reservoir within the section, having been used by the public for a number of years for the purpose of watering horses.

(*c*) It will be remembered that by the previous Public Health Acts, such cisterns, &c., have been vested in the respective local authorities, so that this section only continues the vesting already established. As to the meaning of the phrase *vest in*, see section 13, note (*f*), *ante*, p. 28, and the notes to section 149, *post*.

(*d*) Query, how far the word casts a duty on the local authority. They may maintain public wells, &c., although there is a company which supplies the district with water. "What the Act says is, notwithstanding that there may

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be a company with a vested right to supply the inhabitants, the local authority may, where there is a public well, and where there is a public right to be gratuitously supplied (from it), continue and maintain that well." Per Lord BLACKBURN, in *Smith* v. *Archibald, sup.*

(*e*) In *Edwards* v. *Joliffe*, W. N. 1877, p. 120, an injunction was granted at the suit of the plaintiff, a landowner, through whose estate a lane passed, to restrain the defendants, the servants of the surveyor of highways, from digging holes in the roadway of the lane under these circumstances. On a piece of land not actually part of the lane, but entirely open to it, were five public wells which suddenly failed. The highway board with the sanction of the rural sanitary authority, in whom the wells were vested under the above section, ordered the defendant to dig the holes either to recover the water or to discover the cause of its having ceased to flow. The plaintiff's land on either side of the lane was on a slope, and on the southern side, where the land was below the level of the wells, the plaintiff had been drifting for water, and the defendant said he had no doubt the supply of water to the wells had been tapped by the plaintiff's operations. Held that the above section did not authorize the local authority to enter another man's land and help themselves to water. There was no suggestion that the plaintiff had done anything more than he was clearly entitled to do, or that the defendants were not entering his land.

(*f*) These words are new and must be regarded carefully. If the well, &c., does not contain pure and wholesome water, and the local authority does not care to maintain it, they may close it under section 70, *post*.

(*g*) This would appear to refer to a substitution of the new works in the same place as the old. If so this right would appear to be independent of the restriction imposed upon the local authority by section 52, *ante*, p. 63, as to the construction of waterworks.

(*h*) This appears to refer to section 52. If there is a water company supplying the district, the local authority would seem to require their consent to the gratuitous provision of water to the inhabitants. Otherwise the persons using the gratuitous supply might be chargeable with water rates or might be convicted under section 49 of the Waterworks Clauses Act, 1847, *post*. See *Hildreth* v. *Adamson*, *infra*.

(*i*) A Local Board of Health Act empowered the board to supply the town with water at certain rates for domestic purposes, and for other than domestic purposes for such remuneration and upon such terms and conditions as should be agreed upon between them and the persons desirous of having such supply. An inhabitant of the town having presented to the town an ornamental fountain with a trough or basin, which was set up in one of the public streets, the board supplied it with water on market days for the use of cattle in the market, and for horses if yoked, when passing to and fro. The respondent, who kept horses, with a view to evade payment of the rate for the supply of water to his stable, took his horses to the fountain to drink. Upon an information laid against him under the Waterworks Clauses Act, 1847, section 59, *post*, the magistrates being of opinion that the board had no right to erect a fountain on the public highway otherwise than for the gratuitous use of the public under the corresponding section of the Public Health Act, 1848, declined to convict. On appeal it was held that they were wrong, for that notwithstanding the fountain might be a public nuisance, yet the water was the private property of the board, and the respondent had no right to take it against their will. *Hildreth* v. *Adamson*, 8 C. B. (N.S.) 587; 30 L. J. M. C. 204; 2 L. T. (N.S.) 359; 25 J. P. 645. The effect of this case is that the board may, if they think fit, limit the purposes for which the gratuitous supply is provided. The court refrained from expressing any opinion on the point, whether a fountain for gratuitous supply might by virtue of this section be erected on a public highway.

As to the erection of stand-pipes by a rural sanitary authority or by an urban authority under an order of the Local Government Board, and as to the rating of persons using the water from such stand-pipes, see the Public Health (Water) Act, 1878, sections 9, 10, 11, *post*.

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Water for public baths, or trading or manufacturing purposes.

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or washhouses (*a*) or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied (*b*):

Moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or washhouses, established otherwise than for private profit, or supported out of any poor or borough rates (*c*).

(*a*) See the Baths and Washhouses Acts as defined by section 4, *ante*, p. 14.

(*b*) It is optional with the local authority whether they will supply water for these purposes or not. They are obliged to supply water for domestic purposes if they undertake the supply of water to the district. See section 55, *ante*, p. 65, and see the Waterworks Clauses Act, 1847, section 53, *post*.

The agreement referred to should be duly set forth in writing, and executed under the seal of the parties.

(*c*) It is not quite clear what is referred to by these latter words, as public baths and washhouses are vested in the local authorities, and are supported out of the general funds.

Duty of urban authority to provide fire-plugs.

66. Every *urban* authority *shall* (*a*) cause fire-plugs and all necessary works, machinery, and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person.

And they *shall* paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient (*b*).

(*a*) Note that these words are imperative, and require the urban authority to make this provision. The clause is introduced from the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 124. It must be observed that section 171, *post*, incorporates the provisions of the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 32, which enables the urban authority to provide *fire-engines*.

The following cases have been decided with respect to the liability of water companies to provide and maintain fire-plugs and apparatus for extinguishing fires.

A water company having observed the directions of the Act of Parliament in laying down their pipes, are not responsible for an escape of water from them not caused by their own negligence. The fact that their precautions proved insufficient against the effects of a winter of extreme coldness, such as could not have been foreseen, is not sufficient to render them liable for negligence. Fire-plugs properly constructed having been inserted as safety-valves in these pipes in pursuance of the Act, *semble*, per BRAMWELL, B., that the company are not liable for an accident caused by the accumulation of ice in the streets over the plugs. *Blyth* v. *The Birmingham Waterworks Company*, 11 Ex. 781; 2 Jur. (N.S.) 333; 25 L. J. Ex. 212 26 L. T. (O.S.) 261; 20 J. P. 247.

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By a local Act a waterworks company was bound at the request of the Town Improvement Commissioners to fix fire-plugs into their mains, and to repair and keep them in proper order at the cost of the commissioners, in whom the property in the plugs was vested by virtue of their Improvement Act. In consequence of the cap of one of the plugs provided under the Act being broken a horse placed his foot in the plug-hole and was lamed. Held, that the waterworks company and not the commissioners was liable for the injury. *Bayley* v. *The Wolverhampton Waterworks Company*, 6 H. & N. 241; 30 L. J. Ex. 57; 25 J. P. 199.

Although a water company is not liable for the unforeseen results of an extraordinary frost, yet they are bound to take reasonable care to provide against the consequences of ordinary frosts; and where it appeared it was known that the effect of frost would be to cause the plugs in the water pipes to start, and thus to let the water out at the side, and that some precautions might have been taken, if not to prevent this, at all events to prevent the water from escaping through the soil, and no such precautions having been taken, the plugs started in a frost of extraordinary severity, and the water thus escaping, ran through the soil into the plaintiff's cellar. Held, that there was some evidence of negligence on which a jury might hold the company liable. *Steggles* v. *The New River Company*, 11 W. R. 234; affirmed on appeal, 13 W. R. 413.

A private water Act provided that the company should, at the request of an owner or occupier of any premises situate in or adjoining any street in which any main or service pipe of the company was or should be laid, and who required a supply of water, afford a supply of water. The plaintiff declared upon the section so providing, and stated that he was such an owner and occupier, and that he requested and required a supply of water, but that the company made default in affording to the plaintiff the said supply, by reason whereof he was unable to extinguish a fire which destroyed his premises. The defendants pleaded that the main or service pipe had a certain fire-plug properly fixed in it, and that the said fire-plug was opened for the purpose of extinguishing another fire, which was the cause of the default. They also pleaded that they were prevented from affording the said supply of water from unavoidable cause or accident. Held on demurrer, that the former of these two pleas was good, but the latter was bad. *Campbell* v. *The East London Waterworks Company*, 26 L. T. (N.S.) 475; 36 J. P. 711.

By the Waterworks Clauses Act, 1847, the undertakers are: (1) to fix and maintain fire-plugs; (2) to furnish to the town commissioners a sufficient supply of water for certain public purposes; (3) to keep these pipes to which the fire-plugs are fixed, at all times charged with water at a certain pressure, and to allow all persons at all times to use the same for extinguishing fire without compensation; and (4) to supply to every owner or occupier of any dwelling-house, having paid or tendered the water rate, sufficient water for domestic purposes. Penalties are imposed by the Act for neglect of each of the above duties. The plaintiff brought an action for damages against a waterworks company for not keeping their pipes charged as required by the Act, whereby his premises situate within the limits of the defendants' Act were burnt down. Held, reversing the decision of the Court of Exchequer, that the statute gave no right of action to the plaintiff. *Atkinson* v. *The Newcastle and Gateshead Waterworks Company*, 2 Ex. D. 441; 46 L. J. Q. B. 775; 36 L. T. (N.S.) 761; 25 W. R. 794; 42 J. P. 183.

(*b*) This section will be a sufficient justification, though the owner or occupier of the buildings or walls should object to the mark.

Agreements with universities.

67. In the Oxford or Cambridge district (*a*) the local authority may supply water to any hall, college, or premises of the university within such district, on such terms with respect to the mode of

paying for such supply as may from time to time be agreed on between such univerity, or any hall or college thereof and the local authority. Sect. 67.

(*a*) This section renders the demand of water rates from the occupiers of individual chambers unnecessary, but the agreement must be duly executed under seal by the local authority and the corporate body of the university, college or hall. See section 342, *post*, as to Oxford.

Provisions for Protection of Water.

Penalty for causing water to be corrupted by gas washings.

68. Any person (*a*) engaged in the manufacture of *gas* who (*b*)—

(1.) Causes or *suffers* to be brought or to flow into *any* stream, reservoir, aqueduct, pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or,

(2). *Wilfully* does any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir, aqueduct, pond or place for water is fouled,

shall forfeit for every such offence the sum of *two hundred pounds*, and, after the expiration of twenty-four hours' notice (*c*) from the local authority, or the person to whom the water belongs in that behalf, a further sum of *twenty pounds* for every day during which the offence is continued (*d*), or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to, or under the control of, the local authority, by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows, or whose water is fouled by any such act as aforesaid, or, in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority (*e*); but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (*f*).

(*a*) This word, according to the definition in section 4, *ante*, p. 5, includes any body of persons corporate or unincorporate.

(*b*) A private Act of Parliament which incorporated a gas company, and empowered them to make the necessary works, contained an enactment (section 160), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, &c., or place for water within the limits of the Act, any washing produced in making gas, or do any Act to the water contained in any such stream, &c., or place for water, whereby the water therein should be fouled or corrupted, then the company should forfeit for every such offence £200. Section 161 imposed an additional penalty of £20 per day for the con-

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tinuance of such pollution more than 24 hours after notice. Section 165 made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked at the bottom, and the washings produced in the making of gas escaped and percolated underground through the earth and polluted the water in the plaintiff's well. The company then found on enquiry that mines had been worked by strangers to them under part of their land and close up to the tank. The crack in the tank was caused by the subsidence of the soil, owing, in all probability, to the mining operations. Held, by the Exchequer Chamber, that the company were liable under section 160 to the penalty of £200 for polluting the plaintiff's water by the gas washing. *Hipkins* v. *The Birmingham and Staffordshire Gas Company*, 30 L. J. Ex. 60; 7 Jur. (N.S.) 213; 6 H. & N. 250; 24 J. P. 438.

When noxious matter percolated through the soil from gasworks so as to foul a well, such percolation was held to render a company liable under the similar provisions of 3 & 4 Wm. 4, c. 90. A well which, on account of its having become contaminated, had been disused by the owner for several years, and had been covered over, was held not to cease to be a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled with the acceptance by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character and make it no longer a well, nor could any license to pollute it be inferred from such a state of facts. *Quere*, per KEATING, J., whether a man could by deed give an irrevocable license to pollute a well. A prescription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period. *Millington* v. *Griffiths and Others*, 30 L. T. (N.S.) 65. In the above cases it is assumed that a well is a "place for water."

Apart from statutory provision it appears that the pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R.* v. *Medley and Others*, 6 C. & P. 292.

It is to be observed that the Gasworks Clauses Act, 1847, 10 & 11 Vict. c. 15, s. 21, contains provisions similar to this section. Where, therefore, that Act is incorporated with a local Act, or where there is a local Act in force containing similar provisions, proceedings may be taken either under this or the local Act by virtue of section 340, *post*.

The Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, s. 62, which is incorporated in this Act by section 57, *ante*, and is printed in the Appendix, contains provisions almost identical with this section, which is taken from 18 & 19 Vict. c. 121, ss. 23, 24, and extends the provisions of 11 & 12 Vict. c. 63, s. 80.

(*c*) As to notices and their service, see sections 266, 267, *post*.

(*d*) Apparently this means after notice has been given the latter, so that if no notice be given a penalty of £200 is recoverable; if notice be given, that sum and the additional sum from the time of the notice is recoverable.

(*e*) The same provisions in the Nuisances Removal Act, 18 & 19 Vict. c. 121, ss. 23—5, were held to supersede a clause in a local Act containing similar penalties. *Parry* v. *Croydon Gas and Coke Company*, 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568; 28 J. P. 86; but see section 340, *post*. See also note (*b*), *supra*.

(*f*) 11 & 12 Vict. c. 63, s. 80, contained provisions for examining the gas pipes which are omitted here, and it is very doubtful whether section 305, *post*, will apply to this case.

Local authority

69. Any *local* authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other

person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action, or otherwise, as they may deem advisable for the purpose of protecting any *watercourse* (*a*) within their jurisdiction from pollutions *arising from sewage* (*b*) either within or without their district. Sect. 69. may take proceedings to prevent pollution of streams.

And the costs of, and incidental to, any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

(*a*) Note that this is not applicable to all rivers and streams, but only to such streams as constitute watercourses; and it is presumed that they are not such as belong to the local authority, seeing that the ordinary laws regarding property would enable the local authority to take such proceedings in reference to their own property. To constitute a watercourse there must be water flowing in a channel between banks more or less defined. Per Lord TENTERDEN, in *R.* v *Inhabitants of Oxfordshire*, 1 B. & Ad. 301. It may be natural or artificial. See *Bowes* v. *Watson*, 42 L. T. (N.S.) 27; 44 J. P. 364; *Smith* v. *Barnham*, 1 Ex. D. 419; 34 L. T. (N.S.) 774; 40 J. P. 710; *Biscoe* v. *Drought*, 11 Ir. C. L. R. 250; *Sutcliffe* v. *Booth*, 32 L. J. Q. B. 136; 9 Jur. (N.S.) 1037.

(*b*) The pollution from manufacturing processes or from other similar processes, is not provided for by this section. See however the Rivers Pollution Act, 1876, as to pollution by solid matters, sewage and manufacturing and mining pollutions, and the duties cast upon local authorities by that Act, which is set out in the Appendix.

70. On the representation of any person to any local authority that within their district the water in any well, tank or cistern, public or private, or supplied from any public pump, and used, or likely to be used, by man for drinking or domestic purposes, or for manufacturing drinks for the use of man (*a*), is so polluted as to be injurious to health, such authority may apply to a *court of summary jurisdiction* (*b*) for an order to remedy the same. Power to close polluted wells, &c.

And thereupon such court shall summon the owner *or* occupier (*c*) of the premises to which the well, tank, or cistern belongs, if it be private, and in the case of a public well, tank, cistern or pump, any person alleged in the application to be interested in the same (*d*), and may either dismiss the application or may make an order directing the well, tank, cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water (*e*).

The court may, if they see fit, cause the water complained of to be analyzed at the cost of the local authority applying to them under this section (*f*).

If the person on whom an order under this section is made fails to comply with the same, the court may, on the application of the

Sect. 70. local authority, authorize them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered *in a summary manner* (*g*) from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses (*h*).

(*a*) These last words are new, and were inserted to include cases when the water is used for the manufacture of aerated or other drinks for human consumption.

(*b*) See the definition in section 4, *ante*, p. 15.

(*c*) Apparently the court may select the party, but the local authority should lay before the court their views as to which party should be summoned. As to the word *owner*, see the definition in section 4, *ante*, p. 6.

(*d*) These words are general and indefinite. It is presumed that the proper person would be a parish officer or some officer of the local authority, as for the most part the well or other place will be vested in the local authority under section 64, *ante*, p. 73.

(*e*) Very wide powers are granted to the court by these words. It may be prudent to allow the person to be affected to show cause against the granting of this authority. See *Gill* v. *Bright*, 41 L. J. M. C. 22; 25 L. T. (N.S.) 591; 36 J. P. 198; *R.* v. *Cheshire Lines*, 37 J. P. 373.

(*f*) It may be here observed that 38 & 39 Vict. c. 63, and the amending Acts in the Appendix, which provide for the analysis of food and drugs, exclude the analysis of water. Hence, any analysis of water must be made independently of these Acts. It is to be noticed also that the power of the court to order an analysis is limited to cases in which the local authority are the applicants for the order.

(*g*) See section 251, *post*. This part of the enactment is new.

(*h*) See section 229, *post*.

Regulation of Cellar Dwellings and Lodging-houses.

Occupation of Cellar Dwellings.

Prohibition of occupying cellar dwellings.

71. It shall not be lawful to let (*a*) or occupy (*b*), or suffer to be occupied separately as a dwelling any *cellar* (including, for the purposes of this Act, in that expression, any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of the Act (*c*).

(*a*) The infringement of this section is an offence. The penalty is provided by section 73, *post*.

(*b*) As to what constitutes or amounts to *occupation*, see section 74, *post*.

(*c*) But for these words the repeal of 11 & 12 Vict. c. 63, s. 67, would operate so as to legalize the letting or occupation of the cellars built since the passing of that Act. Consequently no cellar built or rebuilt since 1848 can be lawfully occupied, unless it was let or occupied before that year, and not even in such a case unless the requirements of the next section are complied with.

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Existing cellar dwellings only to be let or occupied on certain conditions.

72. It shall not be lawful (*a*) to let or occupy (*b*) or suffer to be occupied separately as a dwelling, any cellar whatsoever (*c*), unless the following requisitions are complied with (that is to say) :—

Unless the cellar is in every part thereof at least *seven feet* in height, measured from the floor to the ceiling thereof, and is at least *three feet* of its height above the surface of the street or the ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from *six inches* below the level of the floor thereof up to the surface of the said street or ground, an open area of at least *two feet and six inches wide* in every part; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is *one foot* at least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a watercloset, earthcloset, or privy, and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act (*d*); and

Unless the cellar has a fireplace, with a proper chimney or flue, and an external window of at least *nine* superficial *feet* in area clear of the sash frame, and made to open in a manner approved by the *surveyor* (*e*) (except in the case of an inner or back cellar, let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than *four* superficial *feet* in area clear of the sash frame).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of *six inches* at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window.

(*a*) The penalty for an infringement of this section is imposed by the next section.

(*b*) As to what constitutes or amounts to occupation, see section 74, *post*.

(*c*) This section deals with cellars which were in existence at the passing of 11 & 12 Vict. c. 63, *i.e.*, in 1848, because by the last section, which re-enacts 11 & 12 Vict. c. 63, s. 67, no cellars can have been lawfully occupied as dwellings subsequent to that Act. It applies also to the future.

Note to Sect. 72.

(*d*) See section 35, *ante*.
(*e*) See the definition of *surveyor* in section 4, *ante*, p. 5.

Penalty on persons offending against enactment.

73. Any person who lets, *occupies* (*a*), or knowingly suffers to be occupied for hire or rent (*b*), any cellar contrary to the provisions of this Act, shall be liable for every such offence to a penalty (*c*) not exceeding *twenty shillings* for every day during which the same continues to be so let or occupied after notice in writing (*d*) from the local authority in this behalf.

(*a*) See the next section.
(*b*) The words for *hire or rent* are not introduced into the two previous sections, which provide simply that it shall be unlawful to let, occupy, or suffer to be occupied as a dwelling any cellar, &c. There may therefore be a contravention of sections 71 or 72, to which this section does not apply. If so, it would appear that the only remedy would be by indictment for disobedience of a statute which is a misdemeanor at common law. *Archbold's Criminal Law*, p. 2; and see *Reg.* v. *Walker*, *ante*, p. 54.
(*c*) As to the recovery of this penalty, see section 251, *post*.
(*d*) See as to the authentication and service of notices, sections 266, 267, *post*. Care must be taken to serve the notices on the several parties, the lessor and the occupier, according as the proceedings are to be taken.

Definition of occupying as a dwelling.

74. Any cellar in which any person passes the night shall be deemed to be *occupied* as a dwelling within the meaning of this Act.

Power to close cellars in case of two convictions.

75. Where two convictions against the provisions *of any Act* (*a*) relating to the occupation of a cellar as a separate dwelling place have taken place within *three* months (whether the persons so convicted were or were not the same) a *court of summary jurisdiction* (*b*) may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section (*c*).

(*a*) These words will, doubtless, apply to local Acts which contain provisions to prevent the occupation of cellars as well as to convictions under 11 & 12 Vict. c. 63, s. 7; 29 & 30 Vict. c. 90, s. 36, and this Act.
(*b*) See the definition in section 4, *ante*, p. 15.
(*c*) There is no provision for enforcing the order, but the disobedience to it would probably be an indictable misdemeanor. See *Archbold's Criminal Law*, ch. II., s. 10; *Reg.* v. *Walker*, *supra*.

Common Lodging-houses (*a*).

Registers of common lodging-

76. Every *local* authority *shall* (*b*) keep a register, in which shall be entered the names and residences of the keepers (*c*) of all common lodging-houses within the district of such authority and the situa-

tion of every such house, and the number of lodgers authorized under this Act by such authority to be received therein. Sect. 76.

houses to be kept.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded:

And a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

(*a*) The statutes 14 & 15 Vict. c. 28, and 16 & 17 Vict. c. 41, were the statutes which regulated common lodging-houses, but they are repealed by this Act. (See Schedule V., *post*.) The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, contains clauses as to the regulation of common lodging-houses, and in section 116 there is this definition of a "public lodging-house:" "Every house shall be leemed a public lodging-house within the meaning of this Act, in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week." Lord Chief Justice COCKBURN and Lord HATHERLEY, when law officers of the Crown, advised the General Board of Health in 1853, thus:—"It may be difficult to give a precise definition of the term 'Common lodging-house;' but looking to the preamble and general provisions of the Act (14 & 15 Vict. c. 28), it appears to us to have reference to that class of lodging-houses in which persons of the poorer class are received for short periods, and, *though strangers to one another*, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, public houses, or lodgings let to the upper and middle classes." They afterwards explained the passage as to strangers thus:—"Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household." And they added that, in their opinion, "the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question." In the memorandum prefixed to the model bye-laws issued by the Local Government Board under section 80, *post*, it is stated that so far as the foregoing definition of a common lodging-house rests upon the basis of the habitation of a common room by lodgers who are strangers to one another in the sense of not being members of one family or household, it may be inferred that this characteristic equally distinguishes the common lodging-houses to which this Act applies; and that such an inference receives support from the terms of section 87, *post*.

An interpretation of the term "common lodging-house" is contained in section 89, *post*, p. 89, but it is not exhaustive.

In *Langdon* v. *Broadbent*, 37 L. T. (N.S.) 434; 42 J. P. 56, it was held that a lodging-house where hawkers and persons of a similar class were received, staying for various periods, having their meals in one room and paying sixpence a night, was a lodging-house within the above section. GROVE, J., said: "Each case must be decided on its own facts. There may be lodging-houses resorted to by a higher class of persons to which the term 'common lodging-house' would not be applicable. The case does not find whether the lodgers occupied separate sleeping apartments. But I do not think it is necessary to show that the lodgers are all herded together in order to bring the case within the statute. Even if a common room is necessary to constitute a common lodging-house, the evidence here shows that they all took their meals together." And see *Halligan* v. *Ganly*, *infra*.

The Merchant Shipping (Fishing Boats) Act, 1883, 46 & 47 Vict. c. 41, s. 48,

Note to Sect. 76.

provides that the sanitary authority of any seaport town may make bye-laws relating to seamen's lodging-houses. See the section set out in the note to section 80, *post*, p. 86.

(*b*) Note that this provision is imperative.

(*c*) With regard to the meaning of the word *keeper*, the law officers already referred to in note (*a*) advised that where a person neither resides in the house nor exercises any control over its management, but simply receives the rent, he cannot be considered *the keeper*; but where the owner, though not resident in the house, either in person or through an agent, colourably or otherwise exercises control over its management, they had no doubt that he should be considered the keeper. *Halligan* v. *Ganly*, 19 L. T. (N.S.) 268, appears at first sight to be contrary to this opinion. It was a decision of the Common Pleas in Ireland, but it will be found to turn entirely on the definition of *public lodging-house* and *keeper* in a local Act. (27 & 28 Vict. c. cccv. s. 24.) It is not therefore an authority on the interpretation of the above section.

All common lodging-houses to be registered, and to be kept only by registered keepers.

77. A person shall not keep a common lodging-house, or receive a lodger therein, unless the house is registered in accordance with the provisions of this Act; nor unless his name as the keeper thereof is entered in the register kept under this Act:

Provided that when the person so registered dies, his widow or any member of his *family* (*a*) may keep the house as a common lodging-house for not more than four weeks after his death, without being registered as the keeper thereof.

(*a*) This is a word of wide extent and difficult to define. It will be, doubtless, best interpreted by the circumstances of each case. There is no authority for confining it to the person's children. See section 87, *post*, p. 88.

Section 86 provides a penalty for breach of the provisions of this section.

Local authority may refuse to register houses.

78. A house shall not be registered as a common lodging-house until it has been *inspected and approved* (*a*) for the purpose by some officer of the local authority (*b*); and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by *three* inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate, for property of the yearly *rateable value* (*c*) of *six* pounds or upwards.

(*a*) From the memorandum of the Local Government Board already quoted, the following observations are taken:—"To the thoroughness of this inspection much importance should be attached. It is essential that in all structural details the fitness of the premises should be carefully ascertained before the house is placed on the register. The rules which should guide the inspecting officer in his examination of the premises may be thus briefly indicated:—The house should (1) possess the conditions of wholesomeness needed for dwelling-houses in general; and (2), it should have arrangements fitting it for its special purpose of receiving a given number of lodgers. (1.) The house should be dry in its foundations, and have proper drainage, guttering, and spouting, water properly laid, and substantial paving to any area or yard abutting on it. Its drains should have their connections properly made, and

Note to Sect. 78.

they should be trapped, when necessary, and adequately ventilated. Except the soil pipe from a properly trapped water-closet, there should be no direct communication of the drains with the interior of the house. All waste pipes from sinks, basins, and cisterns should discharge in the open air over gullies outside the house. The soil pipe should always be efficiently ventilated. The closets and privies and the refuse receptacles of the house should be in proper situations, of proper construction, and adapted to any scavenging arrangements that may be in force in the district. The house should have a water supply of good quality, and, if the water be stored in cisterns they should be conveniently placed, and of proper construction to prevent any fouling of the water. The walls, roof, and floors of the house should be in good repair. Inside walls should not be papered. The rooms and staircases should possess the means of complete ventilation, windows being of adequate size, able to be opened to their full extent, or, if sash windows, both at top and bottom. Any room proposed for registration that has not a chimney should be furnished with a special ventilating opening or shaft, but a room not having a window to the outer air, even if it have special means of ventilation, can seldom be proper for registration. (2.) The numbers for which the house and each sleeping room may be registered will depend partly upon the dimensions of the rooms and their facilities for ventilation, and partly upon the amount of accommodation of other kinds. In rooms of ordinary construction to be used for sleeping, where there are the usual means of ventilation by windows and chimneys, about 300 cubic feet will be a proper standard of space to secure to each person; but in many rooms it will be right to appoint a larger space, and this can only be determined on inspection of the particular room. The house should possess kitchen and day-room accommodation apart from its bedrooms, and the sufficiency of this will have to be attended to. Rooms that are partially underground may not be improper for day rooms, but should not be registered for use as bedrooms. The amount of water supply, closet, or privy accommodation, and the provision of refuse receptacles should be proportionate to the numbers for which the house is to be registered. If the water is not supplied from works with constant service, a quantity should be secured for daily use on a scale, per registered inmate, of not less than ten gallons a day where there are waterclosets, or five gallons a day where there are dry closets. For every twenty registered lodgers a separate closet or privy should be required. The washing accommodation should, wherever practicable, be in a special place and not in the bedroom, and the basins for personal washing should be fixed, and have watertaps and discharge pipes connected with them.

(*b*) The lodging-house keeper should give notice to the authority and request them to send the proper officer to inspect. That officer is to approve of the house when he has inspected it.

(*c*) Probably this means *net annual value*, which is defined in section 4, *ante*, p. 8.

Notice of registration to affixed to houses.

79. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words, "Registered Common Lodging-house," in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

(*a*) See as to the recovery of this penalty section 251, *post*.

Sect. 80.

Bye-laws to be made by local authority.

80. Every *local* authority shall from time to time make bye-laws (*a*)—

(1.) For fixing (*b*), and from time to time *varying*, the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and,

(2.) For promoting cleanliness and ventilation in such houses; and,

(3.) For the giving of notices and the (*c*) taking precautions in the case of any infectious disease: and,

(4.) Generally for the well *ordering* of such houses (*d*).

(*a*) As to the making of bye-laws, see section 182; as to their confirmation, section 184; and as to their enforcement, section 251, *post*. Model bye-laws have been issued by the Local Government Board for the use of sanitary authorities under this section; and it will be convenient if these are adopted with as little variation as the circumstances of each case will permit.

The Merchant Shipping (Fishing Boats) Act, 1883, 46 & 47 Vict. c. 41, s. 48, provides that the sanitary authority within whose district any seaport town is situate may, with the sanction of the President of the *Board of Trade*, from time to time make, revoke, alter, and amend bye-laws and regulations relating to seamen's lodging-houses in such town. This section is in substitution for 43 & 44 Vict. c. 16, s. 9, which is repealed, though it is provided that bye-laws under that section shall continue in force until bye-laws under the new Act are made The section is too long for insertion in this note, but it will be found in full in the Appendix.

(*b*) The provision for *varying* the number is new. Lord CAIRNS advised that when the number had been fixed it could not be varied under the previous Acts.

(*c*) This is new. See section 84, *post*. See also sections 120—130, *post*, as to infectious diseases, especially section 128, which imposes a penalty on persons who let houses or rooms in which infected persons have been lodging.

(*d*) These are very general words, and apply not only to the state of the house, but, as it seems, to the conduct of the inmates, so that all disorder in the house may be prevented. The model bye-laws do not, however, contain any provisions of this nature.

Power to local authority to require supply of water to houses.

81. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a *reasonable rate* (*a*), the local authority may by notice in writing (*b*) require the *owner* (*c*) or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose (*d*); and, if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

(*a*) It appears that this is matter for the determination of the local authority. See the general provision for the supply of water, section 62, *ante*, p. 71.

(*b*) See as to such notice and its service, sections 266, 267.

(*c*) See the definition in section 4, *ante*, p. 6. As the notice may be given to the owner *or* the keeper it would be right, if the notice be given to the

former, that the latter should also receive information, otherwise his name may be removed from the register without his knowledge. The better plan would be to serve the notice upon both. **Note to Sect. 81.**

(*d*) Query, whether these words will enable the local authority to specify the works to be done. See the cases on similar words in the notes to section 94, *post*.

82. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall, if he fails to do so, be liable to a penalty not exceeding forty shillings. Limewashing of houses.

This penalty will be over and above what he may be required to do under any bye-law. As to the recovery of this penalty, see section 251, *post*.

83. The keeper of a common lodging-house, in which beggars or vagrants are received to lodge, shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required, and transmit to the local authority. Power to order reports from keepers of houses receiving vagrants.

If the local authority act upon this section they must specify for what period the report is to be made. The mode of transmission is not stated, but transmission by post will probably be sufficient. Failure to make this report renders the keeper liable to a penalty under section 86, *post*.

The Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 14, contains provisions as to harbouring thieves or reputed thieves in lodging-houses, or suffering them to meet or assemble therein.

84. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease (*a*), give immediate notice (*b*) thereof to the medical officer of health (*c*) of the local authority, and also to the poor-law relieving officer of the union or parish in which the common lodging-house is situated (*d*). Keepers to give notice of fever, &c., therein.

(*a*) See the provisions of sections 120—130, *post*, as to infectious diseases. The bye-laws under section 80, *ante*, p. 86, may contain provisions similar in effect to this section.

(*b*) The statute does not require notice in writing, and a verbal notice may be held to be sufficient, but it is most desirable that it should be in writing. The model bye-laws require a written notice to be given (No. 18).

(*c*) 14 & 15 Vict. c. 28, s. 10, required the notice to be given to the medical officer of the union, but now it is to be given to the medical officer of health of the authority appointed under sections 189 or 190, *post*.

Note to Sect. 84.

(*d*) Section 124, *post*, provides for the removal of the sick person to a hospital in certain cases.

See section 86, *post*, as to the penalty for non-compliance with the provisions of this section.

As to inspection.

85. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by *any officer* (*a*) of the local authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding *five* pounds (*b*).

(*a*) The section does not require such officer to produce any specific authority for his demand of inspection, thus altering the provision in 11 & 12 Vict. c. 63, s. 66. Moreover, the limitation of the hours of admission therein specified is omitted.

(*b*) See as to the recovery of this penalty, section 251, *post*.

Offences by keepers of houses.

86. Any keeper of a common lodging-house who—

(1.) Receives any lodger in such house without the same being registered *under this Act* (*a*); or

(2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act (*b*), of the persons resorting to such house; or

(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease (*c*),

shall be liable to a penalty (*d*) not exceeding *five* pounds, and in the case of a continuing offence, to a further penalty not exceeding *forty* shillings for every day during which the offence continues (*e*).

(*a*) Possibly registration under previous sanitary Acts may suffice, but it would be advisable to register again under this Act.

(*b*) See section 83, *ante*, p. 87.

(*c*) See section 84, *ante*, p. 87.

(*d*) See as to the recovery of this penalty, section 251, *post*.

(*e*) There is no reference here to breach of the bye-laws, as this is provided for in sections 183 and 251, *post*. The *continuing* here, it is presumed, must refer to continuance after the conviction.

Evidence as to family proceedings.

87. In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same *family* (*a*), the burden of proving such allegation shall lie on the persons making it.

(*a*) It does not appear why the allegation should be made. The corresponding section in 28 & 29 Vict. c. 90, was applicable to prosecutions for overcrowding, but no such mischief is provided for in lodging-houses specially. It may be material, however, with reference to the question whether a house is a

lodging-house or not. See section 76, note (*a*), *ante*. It may also be material whether a bye-law has been infringed whereby provision is made for the separation of the sexes, where the family is young, and consisting of both sexes. Note to Sect. 87.

It may be doubtful what is meant by the word *family*. See section 77, *ante*, and section 91, *post*, when the word occurs again.

Conviction for third offence to disqualify persons from keeping common lodging-house.

88. Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions *of this Act* (*a*) relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within *five* years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous license in writing of the local authority, which license the local authority may withhold or grant on such terms and conditions as they think fit.

(*a*) It is very doubtful whether convictions under previous Acts can be brought under the purview of this section. The section is penal, and will probably be construed strictly, in accordance with the general rule for the interpretation of penal statutes.

Interpretation of "common lodging-house."

89. For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house.

It is difficult to say who is the keeper of the lodging-house in this case, whether the person who is the landlord or tenant of the whole house or the tenant of that part which is let and is so appropriated to the use of lodgers.

It is to be noticed with reference to the note on section 76, *ante*, that this section does not contain a definition of the word, but only an application to a particular case.

Bye-laws as to Houses Let in Lodgings (*a*).

Local Government Board may empower local authority to make bye-laws as to lodging-houses.

90. The Local Government Board may, if they think fit, by notice published in the *London Gazette*, declare the following enactment to be in force within the district or any part of the district of any *local* authority, and from and after the publication of such notice such authority (*b*) *shall* be empowered to make *bye-laws* (*c*) for the following matters (that is to say):—

(1.) For *fixing* and from time to time *varying* the *number* of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one *family* (*d*), and for the separation of the sexes in a house so let or occupied:

(2.) For the *registration* of houses so let or occupied:

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(3.) For the *inspection* of such houses:

(4.) For enforcing *drainage* and the provision of *privy accommodation* for such houses (*e*), and for promoting *cleanliness* and *ventilation* in such houses:

(5.) For the *cleansing* and *lime-washing* at stated times (*f*) of the premises, and for the *paving* of the courts and courtyards thereof:

(6.) For the giving of *notices* and the taking of *precautions* in case of any *infectious disease* (*g*).

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses (*h*).

(*a*) In recent decisions of the Court of Appeal a distinction has been drawn between houses which are let in separate tenements, the landlord retaining no control over the house; and houses in which, though some or all of the rooms are let, the landlord resides personally or by an agent, or otherwise exercises some control. The tenants of the tenements in the former case were held not to be lodgers within the meaning of the Registration Acts. *Bradley* v. *Baylis*, 8 Q. B. D. 194; 51 L. J. Q. B. 183; 46 L. T. (N.S.) 253; 30 W. R. 823; 45 J. P. 847; *Ancketell* v. *Baylis*, 10 Q. B. D. 577; 31 W. R. 233; 52 L. J. Q. B. 104; 47 J. P. 356; 48 L. T. (N.S.) 343. These decisions appear to be of general application, and if so they will limit the number of houses to which this section applies. In *Bradley* v. *Baylis*, JESSEL, M.R., made the following observations:—"First of all, take the case of a *lodger*. It seems to me, as to unfurnished lodgings (and I will only deal with unfurnished lodgings, as it is the only class of cases with reference to which questions are likely to arise), where the owner of the house does not let the whole of it, but retains a part for his own residence and resides there, and when he does not let out the passages, staircase, and outer door, but gives to the inmates merely a right of ingress and egress, and retains to himself the general control, with the right of interfering—I do not mean an actual interference, but a right to interfere, a right to turn out trespassers, and so on—there I consider that such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a *lodger*. That is one extreme case. Now, I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership for the time demised and retains no control over the house, there, in my opinion, the inmates are *occupying tenants*, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door? I think not. Does it make any difference that the landlord does not reside there personally, but has resident servants who occupy on his behalf part of the house? I think not. I think that the inmates are still *lodgers*. Does it make any difference that the landlord does or does not repair? I think not; they are still *lodgers*." See also *Phillips* v. *Henson*, 3 C. P. D. 26; 47 L. J. C. P. 273; 37 L. T. (N.S.) 432; 26 W. R. 214; 42 J. P. 137; *Morton* v. *Palmer*, 9 Q. B. D. 89; 51 L. J. Q. B. 307; 46 L. T. (N.S.) 285; 30 W. R. 115; 46 J. P. 150; *Ness* v. *Stephenson*, 9 Q. B. D. 245; 47 J. P. 134. In the latter case it was held that if the landlord, reserving a room in a house, lets the rest of it to a person, but retains such control and dominion over it as is usually retained by masters of houses let in lodgings, the

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relation of landlord and lodger may exist between the parties within the meaning of the Lodgers Goods Protection Act, 1871, 34 & 35 Vict c. 79, although the lodger has the right of exclusively occupying the greater part of the premises and has separate and uncontrolled power of ingress and egress, and neither the landlord nor his agent sleeps or resides in the house and his lodger acts as caretaker of the part reserved; and that the existence of the relationship of landlord and lodger is a question of fact.

The Local Government Board have issued model bye-laws under this section. In the memorandum prefixed to the bye-laws it is stated that the Board have had regard to the judgment of GROVE, J., in *Langdon* v. *Broadbent*, set out at p. 83, *ante*, and have exempted from the operation of the bye-laws certain houses let in lodgings which from their character are not likely to require supervision. The memorandum states that the exemption clause consists of two sections, of which one relates to unfurnished, and the other to furnished lodgings. It assumes that all houses below a certain rateable value will, if let in lodgings or occupied by members of more than one family, be within the scope of the bye-laws. In the case of houses of higher rateable value the clause confers exemption if the rent of each lodger exceeds a certain minimum. It will rest with the local authority when framing bye-laws upon the bases of the model series, to determine what limits of rateable value or rent the circumstances of their district may render it desirable to prescribe.

(*b*) It will be remembered that many authorities had been empowered to make bye-laws in respect of lodging-houses, and such authorities may proceed to make such bye-laws without fresh notices and advertisement. See section 343, *post*.

(*c*) As to the making, confirmation, publication, and enforcing of bye-laws, see sections 182—6, 251, *post*. As to the houses which should be affected by such bye-laws, see note (*a*), *supra*.

(*d*) See the notes on this word in sections 77 and 87, *ante*, pp. 84 and 88. In the model series above mentioned the Local Government Board have deemed it inexpedient to provide for a variation of the number of occupants or for the separation of the sexes. The omission of the latter provision is due "to the doubt which the Board have entertained as to how far this desirable object can be practically attained, in view of the ordinary conditions of life in lodgings of the poorer class. When, however, the local authority are satisfied that a rule on this subject can be enforced without hardship, as, for instance, in cases where it is found that individual holdings in the lodging-houses of a district generally comprise two or more rooms, the Board will readily co-operate with the authority in framing a bye-law to provide for the separation of the sexes."

(*e*) These bye-laws will not prevent the enforcing of the provisions of this Act which apply to these matters. No bye-laws on this subject are included in the model series, as the Board considered the statutory provisions on this subject to be sufficient without them.

(*f*) These times must be stated in the bye-laws. See section 82, *ante*, p. 87, as to common lodging-houses.

(*g*) These are subjects of great importance, but probably of much difficulty to provide for. These bye-laws will supplement for these lodging-houses what the legislature have provided in respect of common lodging-houses in section 84, *ante*, p. 87.

(*h*) This passage was introduced from 28 & 29 Vict. c. 90, s. 36, which was passed when the Common Lodging-House Acts were in force.

It is well here to refer to 14 & 15 Vict. c. 34, which enables local boards of health, if they think proper, to establish lodging-houses for the labouring classes within their district; to 29 & 30 Vict. c. 28; 30 & 31 Vict. c. 28 (*ante*, pp. 14, 23); also to 31 & 32 Vict. c. 130, printed in the Appendix, which enables provisions to be made for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead

Note to Sect. 90. thereof; also to 38 & 39 Vict. c. 36, and the other Acts mentioned at p. 14, *ante*, all of which are set out in the Appendix; and to 46 & 47 Vict. c. 41, s. 48, as to seamen's lodging-houses, *ante*, p. 86.

Nuisances (*a*).

Definition of nuisances.

91. For the purposes of this Act—

1. Any premises (*b*) in such a state as to be a *nuisance* or injurious to health (*c*):
2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health (*d*):
3. Any animal so kept as to be a nuisance or injurious to health (*e*):
4. Any accumulation or deposit which is a nuisance or injurious to health (*f*):
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same *family* (*g*):
6. Any factory, workshop, or workplace (*not already under the operation of any general Act for the regulation of factories or bakehouses*) (*h*), not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein (*i*):
7. Any fireplace or furnace which does not, as far as practicable, consume the *smoke* (*k*) arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

Any chimney (not being the chimney of a private dwelling-house) sending forth black *smoke* (*k*) in such quantity as to be a nuisance,

shall be deemed to be *nuisances* (*l*) liable to be dealt with summarily in manner provided by this Act: provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the

satisfaction of the court (*m*) that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the *public* (*n*) health: Sect. 91.

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof (*o*).

(*a*) For definition of nuisance, see section 111, *post*, and note.

(*b*) See the definition in section 4, *ante*, p. 6.

(*c*) Upon similar words in 18 & 19 Vict. c. 121, s. 10, it was held that the percolation and dripping of water from a railway bridge on to the road beneath was not a nuisance within the Act. *Great Western Railway* v. *Bishop*, L. R. 7 Q. B. 550; 41 L. J. M. C. 120; 26 L. T. (N.S.) 905; 20 W. R. 969; 37 J. P. 5. But though the word nuisance as used in this section does not include every common law nuisance, it is not necessary that a nuisance in order to be within this Act should also be injurious to health, inasmuch as the terms used are disjunctive, nuisance *or* injurious. It is sufficient if the nuisance is one which interferes with personal comfort: per STEPHEN, J., in *The Bishop Auckland Local Board* v. *The Bishop Auckland Iron Company*, 10 Q. B. D. 138; 52 L. J. M. C. 38; 31 W. R. 288; 48 L. T. (N.S.) 223; 47 J. P. 389. In that case an accumulation or deposit of cinders, ashes, and refuse which were allowed to smoulder and throw off strong fumes or effluvia were held to be a nuisance and within this section, though they were not injurious to health. See also *Banbury Sanitary Authority* v. *Page*, decided upon similar words in section 47, *ante*, pp. 53, 58; and *The Malton Sanitary Authority* v. *The Malton Farmers' Manure Company*, decided with reference to section 114, *post*.

An asylum for the reception of poor persons suffering from small-pox or other infectious or contagious disorders may be a nuisance, although erected and maintained under the provisions of an Act which enables, but does not order, such asylums to be erected. *Metropolitan Asylums District* v. *Hill*, 6 Ap. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 29 W. R. 617; 45 J. P. 664.

A house standing upon the highway which is ruinous and likely to fall down is a common nuisance, for which an indictment will lie. *Reg.* v. *Watts*, 1 Salk. 357. It would also probably be a nuisance within this section. As to nuisances from houses in such a ruinous state of repair as to be dangerous, see *Chauntler* v. *Robinson*, 4 Ex. 163; *Leslie* v. *Pounds*, 4 Taunt. 649; *Payne* v. *Rogers*, 2 H. Bla. 350; *Todd* v. *Flight*, 9 C. B. (N.S.) 377; 30 L. J. C. P. 21; *Gandy* v. *Jubber*, 9 B. & S. 15; 13 W. R. 1022; *Pretty* v. *Bickmore*, L. R. 8 C. P. 401; 28 L. T. (N.S.) 704; 21 W. R. 733; 37 J. P. 552; *Nelson* v. *Liverpool Brewery Company*, 2 C. P. D. 311; 46 L. J. C. P. 675; 25 W. R. 877; *Gwinnell* v. *Eamer*, L. R. 10 C. P. 658; 32 L. T. (N.S.) 835.

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As to a nuisance for an accumulation of soil causing damp to adjoining house whereby it becomes unhealthy, see *Hurdman* v. *The North Eastern Railway Company*, 3 C. P. D. 168; 47 L. J. C. P. 368; 42 J. P. 388.

(*d*) See section 41, *ante*, p. 52, and section 47, *ante*, p. 58.

An owner of a public house erected a urinal in a private passage leading out of the street, and enclosed it between doors, which he kept locked at night. There was a space between the line of area railings in the street and the urinal door nearest to the street, which space he shut off from the street with an iron gate placed flush with the line of railings. This gate was never locked. It was proved that persons habitually used the space between the door and the gate in such a manner as to cause to the neighbours a nuisance, which he took no steps to prevent. Held by KAY, J., that he was responsible for such user, it being a probable consequence of the manner in which he had arranged the premises. *Chibnall* v. *Paul & Son*, 29 W. R. 536.

The appellants were possessed of chemical works at H., and were entitled to discharge refuse by two separate drains into a public sewer. By the one drain liquid impregnated with muriatic acid was discharged, and by the other drain liquid impregnated with sulphur. Upon their combination in the sewer sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellants' drains. The respondents had not properly flushed, cleansed, and trapped the sewer. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices on the appellants. Held, that the escape of the gas was a nuisance within the meaning of the corresponding provisions of 18 & 19 Vict. c. 121, s. 8; that it arose from the acts of the appellants, and that the respondents could lawfully make complaint thereof, although they themselves might have contributed to the existence of the nuisance. *St. Helen's Chemical Company* v. *Corporation of St. Helen's*, 1 Ex. D. 196; 45 L. J. M. C. 150; 34 L. T. 397; 40 J. P. 471. It is to be observed that this decision was given with reference to 18 & 19 Vict. c. 121, but that Act contains no definition of drain and sewer, and it may be questioned whether the decision is applicable to this section.

See *R.* v. *Pedley*, 1 A. & E. 822; 3 L. J. M. C. 119, as to the erection and use of privies which became a nuisance for want of cleansing. *Russell* v. *Shenton*, 3 Q. B. 449; 11 L. J. Q. B. 289, as to a nuisance from omitting to cleanse drains.

(*e*) See section 44, *ante*, p. 56, as to bye-laws relating to the keeping of animals on premises; and section 47 as to keeping swine in a dwelling-house or so as to be a nuisance to any person. The procedure under this and the following sections may in some cases be preferable to that under the bye-laws or for a penalty under section 47. It will be observed that the bye-laws under section 44 relate to the keeping of animals so as to be injurious to health. This section applies to the keeping of animals so as to be a nuisance *or* injurious to health. Again, section 47 relates only to the keeping of swine, while this section applies generally to the keeping of any animals. The above provision is therefore much more extended in scope than either of the former sections.

In addition to the cases cited in the note to sections 44 and 47, *Draper* v. *Sperring*, 10 C. B. (N.S.) 113; 30 L. J. M. C. 225; 4 L. T. (N.S.) 365; 25 J. P. 566, may be referred to. There sheep droppings in a market were held to amount to a nuisance.

(*f*) See sections 42, 43, and 49, *ante*, and the cases cited in the notes to these sections; and *Draper* v. *Sperring*, *supra*.

Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, it was held that he was liable to be convicted under a local Act which imposed a penalty on offensive matter being kept so as to cause a nuisance. *Smith* v. *Waghorn*, 27 J. P. 744. As to accumulation of sea-weed in a harbour, see *The Proprietors of Margate Pier and Harbour* v. *The Town Council of Margate*, *ante*, p. 60. A plea of enjoy-

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ment of right for twenty years of a mixen on defendant's land contiguous and near to plaintiff's house, whereby during all that time offensive smells necessarily and unavoidably arose from the said mixen, was held bad on the ground that it did not show a right to cause offensive smells on the plaintiff's premises, nor that any smells had in fact been used to pass beyond the limits of defendant's own land. *Flight* v. *Thomas*, 10 A. & E. 590; 8 L. J. Q. B. 337.

(*g*) This passage renders immaterial the decision of the Court of Queen's Bench in *The Guardians of Rye Union* v. *Payne*, 44 L. J. M. C. 148; 39 J. P. 375.

In a Scotch case decided by the High Court of Justiciary, *Home* v. *The Local Authority of Kelso*, it was held that when a landlord let along with a farm a cottage, into which the tenant put a bailiff, and the cottage was overcrowded by the bailiff's family, the tenant and not the landlord was liable for the nuisance.

(*h*) The words in the parentheses were repealed by the Factory and Workshop Act, 1878, 41 Vict. c. 16, s. 107, and Schedule VI. See as to bakehouses, *ante*, pp. 14 and 23.

(*i*) By the Factory and Workshop Act, 1878 (*supra*), s. 101, it is provided that the provisions of this section with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of that Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, or workplace. This provision is therefore inapplicable to any factory or workshop within sections 3, 93, of the Factory Act, 1878.

(*k*) An occupier is liable for smoke, though probably caused by his workmen. *Barnes* v. *Ackroyd*, L. R. 7 Q. B. 474; 41 L. J. M. C. 110; 26 L. T. (N.S.) 692; 20 W. R. 671; 37 J. P. 116. This overrules a contrary decision in *Wilcock* v. *Sands*, 32 J. P. 292, where BLACKBURN, J., dissented from the majority of the Court.

In *Barnes* v. *Norris*, 41 J. P. 150, B. charged N. that black smoke issued from certain chimneys on his premises so as to cause a nuisance. There were five separate chimneys together, each used for a separate purpose. N. objected that the summons was bad for not showing from which of the chimneys the smoke was said to issue. Held, that the justices were wrong in allowing this objection, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Semble*, per CLEASBY, B., that if there were several chimneys together which sent forth smoke, though each might not of itself send forth sufficient to be a nuisance, yet an offence might be committed.

Smoke unaccompanied with noise or with noxious vapour, noise alone, and offensive odours alone, although not injurious to health, may severally constitute a nuisance. The material question in all such cases is, whether the annoyance produced is such as materially to interfere with the ordinary comfort of human existence. An injunction was passed to restrain the issuing of smoke and effluvia from a factory chimney and the making of noise in the factory, though it was situated in a manufacturing town; it being proved that such smoke, effluvia, and noise were a material addition to previously existing nuisances. *Crump* v. *Lambert*, L. R. 3 Eq. 409, affirmed on appeal; 17 L. T. (N.S.) 133. See also *Saville* v. *Kilner*, 26 L. T. (N.S.) 277. (As to noxious trades, see sections 112—15, *post*.) Smoke need not be injurious to health in order to be a nuisance within this and the following sections. *Gaskell* v. *Bayley*, 30 L. T. (N.S.) 516; 38 J. P. 293.

As to the liability on indictment for causing a nuisance by smoke, see *R.* v. *White*, 1 Burr. 333; *Reg.* v. *Dewsnap*, 16 East, 194. It is to be observed, however, that a defendant cannot be punished under this Act as well as on indictment or similar proceedings; see sections 111, 340, 341, *post*. As to the right of action for damage to property caused by smoke, see *St. Helen's Smelting Company* v. *Tapping*, 11 H. L. Cas. 642.

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As to the liability of the owner for a smoke nuisance caused by his tenant, see *Rich* v. *Basterfield*, and the remarks thereon in *Harris* v. *James*, *post*, p. 99.

As to the liability of a railway company for smoke nuisances caused by locomotives, see 8 & 9 Vict. c. 20, s. 114, and 31 & 32 Vict. c. 119, s. 16. The latter section was passed to provide for circumstances to which it was held that the former did not apply. See *The Manchester, Sheffield, &c., Railway Company* v. *Wood*, 2 E. & E. 344; 29 L. J. M. C. 29; 1 L. T. (N.S.) 31; 24 J. P. 38.

Smoke caused by the smelting of ores was held not to be within the prohibition in 29 & 30 Vict. c. 90, s. 10, by reason of the exception in 18 & 19 Vict. c. 121, s. 44. *Norris* v. *Barnes*, L. R. 7 Q. B. 537; 41 L. J. M. C. 154; 26 L. T. (N.S.) 622; 20 W. R. 703; 37 J. P. 246. Section 334, *post*, appears to continue this exception.

(*l*) As already stated in note (*b*), this section does not apply to every nuisance which may be made the subject of indictment or action at law or in equity. The nuisances which are enumerated in this section, however, may be remedied by ordinary legal proceedings as well as under this Act, subject, however, to the proviso in section 111, *post*, that no person shall be twice *punished* for the same offence. See also sections 340, 341, *post*.

Reference may be made to 20 & 21 Vict. c. 31, as to nuisances on town and village greens and allotments for exercise and recreation; to 34 & 35 Vict. c. 113, as to nuisances in the metropolis for want of water; and to 35 & 36 Vict. c. 76, s. 41, and c. 77, s. 13, where unfenced mines are brought within the operation of the Nuisances Removal Act, and, therefore, now of this Act by section 313, *post*.

(*m*) The penalty here referred to is that which may be enforced by virtue of section 96, to which it might have been more appropriate to append this proviso. Apparently the case must be brought before the court on an information, and the court are not to impose a penalty if they be satisfied as herein mentioned. If, however, the local authority are assured that such will be the result, they will be justified in abstaining from proceedings which will be unavailing.

(*n*) This points to the injury outside of the premises.

(*o*) There is here a material alteration of 21 & 22 Vict. c. 98, s. 45, and the law is much simplified. The information must, however, be laid, and the court must be satisfied, and if so satisfied must dismiss the complaint.

A local Act incorporated the smoke provisions of 10 & 11 Vict. c. 34 (The Towns Improvement Act, 1847), but contained a similar power to that in the text of remission of the penalties. Where a magistrate found that the only mode by which the emission of smoke complained of could be diminished would render it impossible for the defendant to carry on his business with the furnace he used, which was proved to be properly constructed, the Court of Exchequer held that he had consumed his smoke *as far as possible*, and was entitled to a remission. These words are not to be construed absolutely, but as signifying "as far as possible, consistent with the carrying on of the trade for which the furnace is used." *Cooper* v. *Woolley*, L. R. 2 Ex. 88; 36 L. J. M. C. 27; 15 L. T. (N.S.) 539; 15 W. R. 450; 31 J. P. 135.

Duty of local authority to inspect district for detection of nuisances.

92. It shall be the duty (*a*) of every local authority to cause to be made from time to time inspection of their district (*b*), with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any

Act (*c*) in force within their district requiring fireplaces and furnaces to consume their own smoke. Sect. 92.

(*a*) If this duty be neglected, the local authority may be in default, and may be amenable to proceedings under section 299, *post*.

(*b*) It will be seen from section 102, *post*, p. 105, how this inspection is to be effected. There is no absolute right, in the first instance, of entry into premises for the purpose of this inspection. If admission be refused, an order of justices must be obtained under section 102. Much misapprehension exists in the minds of some medical officers of health and inspectors of nuisances on this point. But a great deal of information can be obtained as to the state of the district without forcible entry into premises.

(*c*) That is, any local Act. This Act, as appears from the previous section, requires smoke to be consumed, but some local Acts contain special provisions on the subject.

Information of nuisances to local authority.

93. Information of any nuisance under this Act in the district of any local authority may be given to such local authority (*a*) by any person aggrieved thereby, or by any two inhabitant house-holders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

(*a*) The statute does not point out how notices are to be given to or served upon the local authority, but generally notices should be in writing, and addressed to the local authority under their proper title, and served at their proper office, and be given to the clerk. If the local authority appoint any other officer to receive notices for them, the notice may be delivered to such officer.

Local authority to serve notice requiring abatement of nuisance.

94. On the receipt of any information respecting the existence of a nuisance the local authority *shall* (*a*), if satisfied of the existence of a nuisance, serve a notice (*b*) on the person by whose act, default, or sufferance the nuisance arises or continues (*c*), or, if such person cannot be found, on the owner (*d*) or occupier of the premises on which the nuisance arises, requiring him to abate the same (*e*) within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose (*f*): Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section *shall* be served on the owner (*g*):

Secondly. That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the *owner* or

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(*a*) This word is imperative, and creates a duty to be discharged by the local authority. As to the enforcing of this duty, see section 299, *post*.

(*b*) See the form of this notice in Schedule IV., Form A.; and as to the authentication and service of such notice, see sections 266, 267, *post*.

(*c*) It is frequently a matter of difficulty to determine the person here described. The following decisions ought to be referred to in doubtful cases:—

If the owner of land erect a building which is a nuisance, or of which the occupation is likely to produce a nuisance, and let the land, he is liable to an indictment for such nuisance being continued or created during the term. He is also liable if he let a building which requires particular care to prevent the occupation from being a nuisance, and the nuisance occur for the want of such care on the part of the tenant. If a party buy a reversion during the tenancy, and the tenant afterwards, during his term, erect a nuisance, the reversioner is not liable for it; but if such reversioner re-let, allowing the nuisance to continue, he is liable for such continuance. And such purchaser is liable to be indicted for the continuing of the nuisance, if the original reversioner would have been liable, though the purchaser has had no opportunity of putting an end to the tenant's interest or abating the nuisance. *R.* v. *Pedly*, 1 A. & E. 822; 3 L. J. M. C. 119. See also *Todd* v. *Flight*, 9 C. B. (N.S.) 377; 30 L. J. C. P. 21. From this decision it would seem to follow that when an owner or reversioner would be liable to be indicted for a nuisance, and is, therefore, to be regarded as the person by whose act, default, or sufferance the nuisance arises or continues, the local authority may proceed against him under this part of the section. But of course it does not follow that the tenant may not also be a person by whose act, &c., the nuisance arises. Thus in *Russell* v. *Shenton*, 11 L. J. Q. B. 289; 3 Q. B. 449, it was held that the occupier and not the owner was *primâ facie* liable for damages for a nuisance consisting of defective drains; and the principle thus laid down appears to be of general application, although the proviso in the latter part of this section might possibly apply to the case of drains defective in point of construction. (See also per PARKE, B., in *Chauntler* v. *Robinson*, 4 Exch., at p. 169.) And it has been held that if the lessee of property proceeding by the license of the lessor performs acts which amount to a nuisance, both of them are liable at law and in equity. *White* v. *Jameson*, L. R. 18 Eq. 303; 22 W. R. 761; 38 J. P. 694. In *Broder* v. *Saillard*, 2 Ch. D. 692; 45 L. J. Ch. 414; 24 W. R. 456, it was held that the occupier of a house is liable for allowing the continuance on his premises of any artificial work which causes an injury to a neighbour, even though it has been put there before he took possession. And see *Tarry* v. *Ashton*, 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. (N.S.) 97; 24 W. R. 581; 40 J. P. 439. When the tenancy is from year to year as long as both parties please, the owner is not liable for a nuisance unless it existed at the time the tenancy commenced. *Gandy* v. *Jubber*, 9 B. & S. 15; 13 W. R. 1022; but this decision is also subject to the proviso already referred to. *Gandy* v. *Jubber* overrules, or at least supersedes a dictum of LITTLEDALE, J., in *Reg.* v. *Pedly*, to the effect that if a reversioner allows a nuisance to continue after he might have determined the tenancy, he is liable. And see *Reg.* v. *Barrett*, 32 L. J. M. C. 36; *Reg.* v. *Stannard*, 33 L. J. M. C. 61. When the nuisance consists of the dangerous condition of the premises demised to the tenant, and the tenant is liable to repair under a covenant, the landlord is not liable in respect of the nuisance, unless he has done some act authorizing the continuance of the dangerous state of the premises. *Pretty* v. *Bickmore*, L. R. 8 C. P. 401; 28 L. T. (N.S.) 704; 21 W. R. 733; 37 J. P. 552. And see *Nelson* v. *The Liverpool Brewery Company*, 2 C. P. D. 311; 46 L. J. C. P. 675; 25 W. R. 877. This rule applies even when the dangerous condition of the premises

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existed at the time of the demise, the lessee occupying under an obligation to repair. *Gwinnell* v. *Eamer*, L. R. 10 C. P. 658; 32 L. T. (N.S.) 835. A. let to B. a field for the purpose of its being worked as a lime quarry. The ordinary way of getting the limestone was by means of blasting, and A. authorized the quarrying of the stone and the erection of lime kilns in the field. A nuisance was caused to the adjoining occupier by the blasting and by the smoke from the kilns, and he brought an action against both A. and B. On demurrer by A., held, that he, the landlord, was liable, although the nuisance was actually created by the act of his tenant, for the terms of the demise were an authority from him to B. to create the nuisance, which was, therefore, the necessary consequence of the mode of occupation contemplated in the demise. *Harris* v. *James and Another*, 45 L. J. Q. B. 545; 35 L. T. (N.S.) 240. The court characterized the previous case of *Rich* v. *Basterfield*, 4 C. B. 783; 16 L. J. C. P. 273, as one of excessive refinement. There A., the owner of a house with a fireplace and chimney, demised it to a tenant from week to week. The tenant lighted fires, and from the position of the chimney the emission of the smoke was a nuisance to B., the owner of the adjoining house. More than one week elapsed, during which A. did not determine the tenancy. In an action by B. against A. it was held that A. was not liable, as the tenant might by burning coke, or by abstaining to light fires, or in some similar way have used the premises without creating a nuisance. The owner is, of course, liable for the existence of a nuisance consisting of or arising out of the non-repair of premises when he has taken upon himself the duty of repairing (*Leslie* v. *Pounds*, 4 Taunt. 649; *Payne* v. *Rogers*, 2 H. Bla. 350)'; or where the lessee is bound by his agreement to do the act which leads to the damage or matter of complaint. (*Burt* v. *The Victoria Graving Company, Limited*, 47 L. T. (N.S.), 378, for in this case the lessee resembles an agent of the lessor for the purposes of such act.

The foregoing remarks apply only with reference to the question, who is the person to whom notice under this section should or may be given? They do not affect any question of liability as between landlord and tenant; as to which see section 226, *post*.

Where sheep were penned in pens fixed by the owner of a market on the highway of the market, and tolls were received by him for the same, it was held that the droppings of the sheep left therein constituted a recurring nuisance which arose from the default, permission, or sufferance of the owner of the market, for which he was liable. *Draper* v. *Sperring*, *ante*, p. 94.

But a lord of a manor was held not to be liable in respect of a filthy pond on a common in the manor. *Richmond Union* v. *The Dean and Chapter of St. Paul's*, 18 L. T. (N.S.) 522; 32 J. P. 374.

B. drained his premises into a barrel drain, which also received the sewage of other premises. This drain passed for about 300 yards under a turnpike road, and thence the sewage was conveyed by an open drain through certain land not belonging to B., and ultimately into an open drain about half a mile from B.'s premises, by the side of a road on land not B.'s. This open drain was a nuisance, the matter from B.'s premises in itself being sufficient to cause a nuisance. On complaint the justices ordered B. to abate the nuisance by cutting off all communication from his premises to the barrel drain. F. was the owner of six houses let to tenants. He had constructed a drain from the houses under land not his own by leave of the owner, by which the sewage was conveyed into and along a watercourse, and the accumulation at the mouth of the drain was a nuisance. On complaint the justices ordered F. to abate the nuisance. Held, that the orders were rightly made on B. and F., for that they were the persons by whose act respectively the nuisances arose. In proceedings under the Act, the question whether or not the persons against whom the proceedings are taken have a legal right to cause their sewage to flow in the given channel, &c., is immaterial. *Brown* v. *Bussell*, *Francombe* v. *Freeman*, L. R. 3 Q. B. 251; 37 L. J. M. C. 65; 18 L. T. (N.S.) 19; 16 W. R. 511; 9 B. & S. 1; 32 J. P. 196.

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A harbour company were held to be the person through whose default a nuisance from accumulation from seaweed in the harbour arose or continued. *The Proprietors of Margate Pier and Harbour* v. *The Town Council of Margate*, 20 L. T. (N.S.) 564; 33 J. P. 437.

Where there was a flow of sewage from several houses without appreciable damage from each, but the accumulation caused a nuisance on other properties, the occupiers of each of the houses were held to be liable. *Hendon Union* v. *Bowles*, 20 L. T. (N.S.) 609; 16 W. R. 510; 34 J. P. 19. This decision appears to answer a query left undecided in *Brown* v. *Bussell, supra.*

The occupier of a factory or other works is liable for a nuisance arising out of smoke, though the same may be caused by his workmen. *Barnes* v. *Akroyd, ante*, p. 95, superseding *Wilcocks* v. *Sands*, 32 J. P. 292.

As to the persons liable for the evolution of sulphuretted hydrogen gas in a sewer, see *St. Helen's Chemical Company* v. *Corporation of St. Helen's, ante*, p. 94.

The appellant rented land of the owner of houses and other land in the neighbourhood. The landowner, without the appellant's consent, made a sewer under the land he occupied. Pecuniary compensation was claimed at the time, but for two years the sewage of several houses passed through the sewer: the appellant being unable to get satisfaction from his landlord at length stopped up the sewer, and the local board obtained a conviction against him under the above section and section 96 of this Act, although no nuisance existed on his land. Held, on a case stated, that the appellant was a person by whose act the nuisance arose or continued, and that he was rightly convicted. *Riddell* v. *Spear*, 40 L. T. (N.S.) 130; 43 J. P. 317.

(*d*) See the definition in section 4, *ante*, p. 6. Note that it is only when the person cannot be found by whose act, &c., the nuisance arises, that the notice may be served on the owner or occupier as such. The local authority may serve either, subject to the provisos in the latter part of the section.

In determining upon whom the notice should be served, the local authority should, as far as possible, consider whether it is in the power of the person served to comply with it. Thus, if a nuisance exists on the land of A. which has been caused by B., B. has no power to enter on A.'s land to abate the nuisance, and the justices cannot under the next two sections order him to do so. *Scarborough* (*Mayor of*) v. *Scarborough Rural Sanitary Authority*, 1 Ex. D. 344; 34 L. T. (N.S.) 768; 40 J. P. 726. (See the cases in the notes to these sections.) In such a case the notice should be given to the person on whose land the nuisance exists. (Per COCKBURN, C. J., in *Ex parte Trimble*, 41 J. P. 455.) Such person may be said to have suffered the nuisance to exist or arise on his premises, and he may possibly have a remedy over against the person who has actually caused the nuisance. The local authority may themselves abate the order in such a case by virtue of the second proviso to the section.

(*e*) The abatement of the nuisance may possibly involve the pulling down of the premises where the nuisance consists of overcrowding, and the premises are unfit for human habitation. See *Brown* v. *Biggleswade*, cited at 43 J. P. 554.

(*f*) Query, whether the local authority may specify in the notice the works which they require to be done. Compare *Ex parte Whitchurch* and *Ex parte Saunders* cited in the notes to the next section. See also section 36 note (*b*), p. 50. But in any case it will most likely be safe for the authority to follow in their notice the exact words of the section.

(*g*) See *Cook* v. *Montague, ante*, p. 7. The owner as distinguished from the occupier is to make good in all cases a nuisance which arises from structural deficiencies or defective construction. The occupier is not liable for such default under this statute, whatever may be his responsibilities under the contract with his landlord. Such responsibilities are not affected by the Act. See section 226, *post.*

(*h*) This word should have been omitted. In the cases contemplated there has not been any order. See as to this proviso note (*d*) *supra.*

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On non-compliance with notice complaint to be made to justice.

95. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the *local* authority, likely to recur (*a*) on the same premises, the local authority *shall* (*b*) cause a complaint (*c*) relating to such nuisance to be made before a justice (*d*), and such justice shall thereupon issue a summons (*e*) requiring the person on whom the notice was served to appear before a *court of summary jurisdiction* (*f*).

(*a*) See *Draper* v. *Sperring*, *ante*, p. 94. See also note (*a*) to the next section.

(*b*) These words are imperative, and the neglect of the local authority will be a default; as to which see section 299, *post*.

(*c*) It does not appear that this complaint must be in writing. See 11 & 12 Vict. c. 43, s. 8. As to the limitation of time, see section 252, *post*. The time will, of course, run from the default in the first case to which the section applies, but it is not so clear when the matter of complaint arises in the second. It will be safer that the complaint should be in writing, so as to prevent any dispute in the future by the person in alleged default as to the particular matter complained of.

(*d*) See as to his competency, section 258 and the notes thereon.

(*e*) See the form of the summons in the Schedule IV., Form B.

(*f*) See the definition in section 4, *ante*, p. 15.

Power of court of summary jurisdiction to make order dealing with nuisance.

96. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur (*a*) on the same premises, the court *shall* (*b*) make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose (*c*); or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence (*d*); or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The court *may* by their order impose a penalty not exceeding *five* pounds on the person on whom the order is made (*e*), and shall also *give directions* (*f*) as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance (*g*).

(*a*) By this section it is provided that after the summons mentioned in the last section the court may make an order as provided by the section. In *Barnes* v. *Akroyd*, *ante*, p. 95, BLACKBURN, J., said that the justices had stopped too soon in their investigation, for after first ascertaining whether a nuisance had been proved to exist they should have proceeded further to inquire if such nuisance were likely to recur.

(*b*) This is imperative upon the court; still, if the party before the court

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undertakes to abate the nuisance, it is presumed that the court may adjourn the case to abide the result of the undertaking.

As to the appearance of the local authority in court, see section 259, *post*.

(*c*) The form of order is given in Sched. IV., Form C., *post*. It is very doubtful to what extent the order may specify the precise works to be done. The form in the schedule has been drawn as if the particular work might be specified. But the section hardly warrants this, for it directs compliance with the requisitions of the notice or *otherwise* abating the nuisance, and the succeeding phrase, to do the necessary works, do not imply that the necessary works may be prescribed. This view of the meaning of the section was adopted in *Ex parte Whitchurch*, 6 Q. B. D. 545; 50 L. J. M. C. 41, 99; 29 W. R. 507; 45 J. P. 392. In that case a privy and ashpit were a nuisance, and a notice had been given to abate it, and for that purpose to fill up the ashpit, abandon the privy, and build a pail closet. On default the justices made an order under this section in the terms of the notice. The court quashed the order on the ground that under the section the owner could not be compelled to put up a particular kind of closet. STEPHEN, J., said that the question turned upon the word *necessary*, which could not be extended to mean what the local authority thought necessary. But in *Ex parte Saunders*, 11 Q. B. D. 191; 52 L. J. M. C. 89; 47 J. P. 404, a water-closet in the centre of a house being a nuisance, the sanitary authority gave notice to the owner under section 94 to abate the nuisance, and for that purpose to remove the said closet from the centre of the house and place it near an outer wall, where there might be efficient ventilation, and to fix the soil pipe outside the wall. The owner having made default, an order was made under this section to do the things specified. It was held that the justices had jurisdiction to make the order. The court (CAVE and A. L. SMITH, JJ.) intimated that *Ex parte Whitchurch* was distinguishable, on the ground that the order was not for the erection of a particular kind of closet where none existed before, but for the removal of a closet to a place where it would not be a nuisance. The distinction, if any exists, is very subtle, and in drawing up the notice under section 94 and the order under this section, it will be safer to omit the specification of the works which are considered necessary, and to proceed under section 98 if the works actually done are not satisfactory. It may be mentioned here that the order made under this section is an order made in a criminal cause or matter within the meaning of the Judicature Act, 1873, 36 & 37 Vict. c. 66, s. 47, and that when the Queen's Bench Division has granted a *certiorari* to quash the order, an appeal will not lie to the Court of Appeal. *Reg.* v. *Whitchurch*, 7 Q. B. D. 534; 50 L. J. M. C. 99; 45 J. P 617.

(*d*) Black smoke having issued from a chimney in such quantities as to be a nuisance, an order of abatement was made. Subsequently, black smoke having again issued from the chimney, an order was made on complaint of the respondents prohibiting the recurrence of the nuisance. Two informations having been laid, one in respect of each order, but both founded on the same act of emission of black smoke; held, that the act complained of being the same in each case, there could not be two convictions in respect of it. *Eddleston* v. *Barnes*, 1 Ex. D. 67; 45 L. J. M. C. 73; 34 L. T. (N.S.) 497; 40 J. P. 88. The order of justices under 18 & 19 Vict. c. 121, s. 13, was without appeal to the quarter sessions. See *Ex parte The Corporation of Liverpool*, 8 E. & B. 537; 4 Jur. (N.S.) 333; 27 L. J. M. C. 89; 22 J. P. 562; but now section 269, *post*, allows of an appeal to the sessions, and section 99, *post*, suspends proceedings in that event. The order may be good as to the prohibition, though bad as to the abatement. See *Scarborough* (*Mayor of*) v. *Scarborough Rural Sanitary Authority*, *ante*, p. 100.

(*e*) It is to be noticed that the form in the schedule does not provide for this penalty. The provision is new, and the imposition of the penalty is discretionary with the court.

(*f*) It is presumed that this must be by an order, but the form in the schedule does not provide for these costs.

(*g*) It is not quite clear what this penalty is for, whether for the previous nuisance or for disobedience of the notice of the local authority. It cannot be for disobedience of the justices' order, for that was not then made. It seems, however, that if the two sections 95 and 96 be read together, the penalty is for non-compliance with the notice, inasmuch as complaint cannot be made to the justices until the person served with notice is in *default*. **Note to Sect. 96.**

97. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court *may* prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on *the court* (*a*) being satisfied that it has been rendered fit (*b*) for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited. **Order of prohibition in case of house unfit for human habitation.**

(*a*) By the use of this word the difficulty in 18 & 19 Vict. c. 121, s. 13, is avoided. It is not now necessary that there should be the same justices for all these orders. The statute does not point out any process to be applied in these proceedings. It is presumed that application is to be made to the court, but previous notice should be sent to the local authority.

(*b*) See the provisions in section 157, *post*, as to the bye-law regarding houses unfit for human habitation. That bye-law is restricted to houses erected within the period specified, but the above section applies to ancient as well as modern houses.

98. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings *per day during his default* (*a*); and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover, the local authority *may* (*b*) enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a *summary manner* (*c*) the expenses incurred by them from the person on whom the order is made. **Penalty for contravention of order of court.**

(*a*) Upon an information against the appellant for a nuisance through a chimney sending forth black smoke, an order was made on the 20th July, 1868, that within two months he should make such alterations in the said chimney as to consume the smoke arising therefrom. The appellant thereupon made certain alterations, and the smoke ceased to issue until the 4th of the following February, when for a certain limited period on that day and the following days it again issued. In the following July an information was laid for disobedience of the order. No evidence was given as to the cause of the issuing of the smoke, and the justices convicted the appellant. Held, first that there was evidence justifying the conviction; and secondly, that as the nuisance was a continuing one, 11 & 12 Vict. c. 43, s. 11, did not apply. *Higgins* v. *The Norwich Union*, 22 L. T. (N.S.) 752; 34 J. P. 806.

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When an order was persistently disregarded, nineteen separate informations were laid, and the same number of summonses issued in respect of as many acts of disobedience, each committed on a different day, by sending forth black smoke. At the hearing, the full penalty of 10s. was imposed for the offence alleged in each summons, and the offenders were also ordered to pay 15s. costs on the first summons, and 16s. costs upon every other. They objected that their disobedience was but one default, and that the divers acts complained of should have been charged in a single summons, to which only one set of costs would have attached; and they obtained a rule calling on the justices to state a case under 20 & 21 Vict. c. 43. Held, that each daily emission of smoke was a separate act of disobedience, for which a separate summons might be lawfully issued, and that under the circumstances the justices had not so exercised their discretion in awarding costs as to render the interference of the court necessary. *Reg.* v. *Waterhouse*, L. R. 7 Q. B. 545; 41 L. J. M. C. 115; 26 L. T. (N.S.) 761; 20 W. R. 712; 36 J. P. 471.

A summons must be issued to the defendant before this penalty can be enforced. *Reg.* v. *Jenkins*, 32 L. J. M. C. 1; 3 B. & S. 116; 7 L. T. (N.S.) 272; 11 W. R. 20; 26 J. P. 775.

(*b*) Justices made an order on P. to cleanse a drain; P. did not obey the order and the local board refused to take any steps to enforce it. Held, that the party aggrieved was not entitled to a *mandamus* to the local board to compel them to abate the nuisance under the corresponding provisions of the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 14. *Ex parte Basset In re the Local Board of West Ham*, 7 E. & B. 280; 26 L. J. M. C. 64; 28 L. T. (O.S.) 267; 3 Jur. (N.S.) 136; 21 J. P. 85. The form in the schedule, however, requires the local authority to execute the works.

This clause of itself gives a right of entry to the local authority.

When an order was made under the corresponding provisions of 18 & 19 Vict. c. 121, upon the owner to abate the nuisance, and, in his default, upon the local authority, it was held that he was liable to the penalty upon his default, though the local authority failed to act under the order. *Tomlins* v. *The N. R. Company of Great Stanmore*, 12 L. T. (N.S.) 118; 29 J. P. 117.

(*c*) See section 251, *post*, and note (*e*) to section 21, *ante*, p. 38.

Appeal against order.

99. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act (*a*) no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted (*b*).

(*a*) See sections 268, 269, *post*.

(*b*) It will be somewhat difficult in many cases to determine when this time has arrived.

In certain cases order may be addressed to local authority.

100. Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court *may* be addressed to and executed by the local authority.

See the form of the order in Schedule IV., Form D., *post*.

The proviso at the end of section 94, *ante*, p. 97, applied only where the person causing the nuisance could not be found, and it was clear that the owner and occupier were not responsible. In that case no order was necessary. But when neither the person causing the nuisance, nor the owner nor the

occupier can be found, then an order may be made on the authority under this section. It would appear that this order can only be made when the complaint is laid by an individual aggrieved under section 105, for in the absence of the person causing the nuisance, and the owner and occupier, there would be no person against whom the local authority could lodge a complaint under the previous sections. **Note to Sect. 100.**

101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by *public auction*; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing. Power to sell manure, &c.

See also section 49, *ante*, p. 59, where, however, a sale by public auction is not required. Sale by auction can hardly be necessary in most of these cases. It is to be noticed that this section applies only to matters or things removed by the local authority in abating a nuisance.

102. The local authority, or any of their officers, *shall* (*a*) be admitted into any premises for the purpose of *examining* as to the existence of any nuisance thereon, or of enforcing the provisions of *any Act* (*b*) in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of *nine* in the forenoon and *six* in the afternoon; or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on. Power of entry of local authority.

Where under this Act a nuisance has been *ascertained to exist*, or an order of abatement or prohibition has been made (*c*), the local authority or any of their officers *shall* (*d*) be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, *shall* (*e*) be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same (*f*).

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof *on oath* (*g*) by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given (*h*) to the person having custody of the premises), may, by *order* under his hand, require the person having custody of the premises to admit

Sect. 102. the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, *on oath* (*g*) made before him of that fact, by order under his hand authorize the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

(*a*) The section is very wide in reference to the officers, and no particular officer is referred to, but as none can enter *compulsorily*, as of right, against the will of the occupier, without an order of justices, this point will be cleared up by such order. The local authority being a corporate body cannot enter of themselves; they should therefore depute this function to the inspector of nuisances, and perhaps to the medical officer of health.

(*b*) Reference is here made to the local Acts, which in many instances contain this provision.

(*c*) Under section 96, *ante*, p. 101.

(*d*) See note (*a*).

(*e*) The previous paragraph relates to the mere inspection, this to the action of the local authority under the order. See further sections 105, 106, *post*, pp. 108—9.

(*f*) By 13 & 14 Vict. c. 21. s. 4, it is provided that in all Acts of Parliament the word *oath* shall include affirmation, declaration, affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing.

(*g*) These words seem to imply personal delivery to the custodian of the premises. There is no provision in respect of empty or unoccupied premises, because there can be no refusal of admission. It is by no means clear whether admission can be forced in respect of such premises, and yet the necessity of the case may often require it.

Penalty for disobedience of order.

103. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

See section 251, *post*, as to the recovery of such penalty.

Costs and expenses of execution of provisions relating to nuisances.

104. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be *money paid for the use* and at the request of the person on whom the order is made (*a*); or if the order is made on the local authority, or if no order is made, but the nuisance is *proved* (*b*) to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the *owner* (*c*) of premises, such costs and

expenses may be recovered from any person who is for the time being *owner* (*c*) of such premises: Provided that such costs and expenses shall not exceed in the whole one year's *rackrent* (*d*) of the premises. Sect. 104.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered *in a summary manner* (*e*), or in any county (*f*) or superior court; and the court shall have power to divide costs, expenses, and penalties, between persons by whose acts or defaults a nuisance is caused as to it may seem just (*g*).

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises (*h*); and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent:

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand (*i*) of such costs or expenses from such occupier, and after notice (*k*) not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier:

Provided also, that nothing herein contained shall affect any contract between any owner *or* (*sic*) occupier of any house, building, or other property, whereby it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant (*l*).

(*a*) As in fact the local authority will have paid the money, such authority will apparently be the proper plaintiffs.

(*b*) This proof must be given in the action or in the summary proceedings.

(*c*) See the definition in section 4, *ante*, p. 6. The words "for the time being the owner," seem to have been inserted in order to avoid the effect of the decision in *The Guardians of the Blything Union* v. *Warton*, 32 L. J. M. C. 132; 3 B. & S. 352; 7 L. T. (N.S.) 672; 11 W. R. 306; 27 J. P. 87, which was decided with reference to 18 & 19 Vict. c. 121, s. 19.

Note to Sect. 104.

(*d*) See the definition in section 4, *ante*, p. 8.

(*e*) See section 251, *post*. It is to be observed that if the money is sought to be recovered summarily, it will be a civil debt within the meaning of the Summary Jurisdiction Act, 1879, sections 6, 35.

(*f*) See also section 261, *post*. It was held upon the corresponding provisions of 11 & 12 Vict. c. 123, s. 3, that whatever may have been the amount of the costs, and although a question of title to the land on which the nuisance existed arose, the county court had jurisdiction by the express terms of the Act. *Reg.* v. *Harden*, 2 E. & B. 188; 17 Jur. 804; 22 L. J. Q. B. 299; 2 W. R. 164; 22 L. T. (o.s.) 228; *Guardians of Hertford Union* v. *Kimpton*, 11 Ex. 295; 25 L. J. M. C. 41; 25 L. T. (o.s.) 185; 3 W. R. 521; 19 J. P. 678.

(*g*) Apparently this must be done at the risk of the complainants, for if the costs and expenses be divided, some of the defendants may be unable to pay their shares, and there would then, as it seems, be no recourse to the others. Hence the complainants should be heard before the order is made in this form.

(*h*) In the *Vestry of Bermondsey* v. *Ramsay*, L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. (N.S.) 429; 19 W. R. 774; 35 J. P. 567, it was held with respect to a similar clause in 25 & 26 Vict. c. 102, s. 96, that an unsatisfied judgment against the *owner* for a proportion of paving expenses was no bar to an action for the same expenses against the occupier. See also as to proceedings against a subsequent owner, *Plumstead Board of Works* v. *Ingoldby*, L. R. 8 Ex. 63, 174; 42 L. J. Ex. 50, 136; 29 L. T. (N.S.) 375; 21 W. R. 77, 817; 37 J. P. 759, and the cases cited in the notes to section 257, *post*.

(*i*) The local authority must make this demand and give the notice. As to the authentication and service of such notice, see sections 266, 267, *post*.

(*k*) On similar words in 25 & 26 Vict. c. 102, s. 96, it was held that in order to entitle an occupier to avail himself of the proviso, the money must have been actually paid, and consequently that a distress for rent which became due after a notice under that section made before payment to the vestry which gave the notice was not illegal. *Ryan* v. *Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135.

(*l*) See section 226, *post*, and the notes thereon.

Power of individual to complain to justice of nuisance.

105. Complaint may be made to the justice of the existence of a nuisance under this Act on *any* premises within the district of any local authority *by any person aggrieved thereby* (*a*), or by any inhabitant of such district, or *by any owner of premises* (*a*) within such district, and thereupon the like proceedings (*b*) shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority (*c*):

Provided that the court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorize (*d*) the entry into such premises of any constable or other person for the purposes of such examination:

Provided also, that the court may authorize any constable or other person to do all necessary acts for executing an order made under

this section, and to recover the expenses from the person on whom the order is made in a *summary manner* (*e*). Sect. 105.

Any constable or other person authorized under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorized under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon (*f*).

(*a*) These words extend the provision of 23 & 24 Vict. c. 77, s. 13, since the nuisance complained of, which was there limited to *private* premises, is now described generally and may exist on any premises.

As to who is an *owner*, and what are premises, see the definitions in section 4, *ante*, p. 6.

(*b*) By 18 & 19 Vict. c. 121, s. 12, the local authority might cause complaint to be made of a nuisance, and the justices might order it to be abated. By 23 & 24 Vict. c. 77, s. 13, on complaint by an inhabitant a justice might act as in case of a complaint by the local authority as if the person complaining were such authority. By 29 & 30 Vict. c. 90, Part II. (ss. 14-34) of the Act, was to be construed as one with the above statutes; and by section 21 the nuisance authority were required, previous to taking proceedings under 18 & 19 Vict. c. 121, s. 12, to serve a notice on the person by whose acts the nuisance arose, to abate the same within a time specified. It was held that notice was not necessary before laying a complaint by an inhabitant. *Cocker* v. *Cardwell*, L. R. 5 Q. B. 15; 39 L. J. M. C. 28; 10 B. & S. 797; 21 L. T. (N.S.) 457; 18 W. R. 212; 34 J. P. 516. Per COCKBURN, C. J.: "If the sections had occurred in the same order in one and the same statute, it clearly could not have been said that the last section applied to a private individual when all mention of him was omitted." It would appear, therefore, that an individual need not give notice before proceeding under this section.

(*c*) These incidents and consequences appear in the previous sections.

(*d*) This authority must be given by an order of the court. See section 102, *ante*, p. 105.

(*e*) See section 251, *post*. It is presumed that the authority to the constable will be contained in the order.

(*f*) See section 102, *ante*, p. 105.

Power of officer of police to proceed in certain cases against nuisances.

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default (*a*) in doing their duty in relation to nuisances under this Act, the Local Government Board may authorize any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover *in a summary manner* (*b*) or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without

Sect. 106. such person's consent, or without *the warrant of a justice* (*c*), for the purpose of carrying into effect this enactment.

(*a*) See further as to this default, section 299, *post*. The authority of the Local Government Board will be given by an instrument under seal. That board will generally be satisfied by the result of correspondence between the several parties, but they may require some of their inspectors to examine into the matter on the spot and report thereon.

(*b*) See section 251, *post*, and as to the courts referred to, see section 104, note (*h*), *ante*, p. 108.

(*c*) See section 102, *ante*, p. 105, and the preceding section.

Local authority may take proceedings in superior court for abatement of nuisances.

107. Any local authority *may*, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person *in any superior court of law or equity* (*a*) to enforce the abatement or prohibition of any nuisance *under this Act* (*b*), or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purpose of this Act (*c*).

(*a*) Now in the High Court of Justice. As to the various legal remedies for a nuisance, see section 111, *post*, and the notes thereto.

(*b*) It must be noticed that no authority is given to the local authority to institute proceedings in the case of any nuisance not the subject of this Act, and though such authority might prosecute indictments for common law nuisances as any other corporate body, yet there would be a great question whether they could charge the expenses on their rates or funds.

18 & 19 Vict. c. 121, s. 30, confined this power to nuisances within the area of the jurisdiction of the local authority, but this restriction is removed by the text. And see the next section.

(*c*) See Part VI., *post*.

Power to proceed where cause of nuisance arises without district.

108. Where a nuisance *under this Act* (*a*) within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place *without their district* (*b*), the local authority may take or cause to be taken against *any person* in respect of such act or default any proceedings in relation to nuisances by this Act authorized, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district (*c*), so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the *metropolis* so far as to authorize proceedings to be taken under it by any *nuisance authority* in the *metropolis* in respect of any nuisance within the area of their juris-

diction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority. Sect. 108.

In this section "nuisance authority" means the local authority in the metropolis for the execution of the Nuisances Removal Act for England, 1855, and the Acts amending the same (*d*).

(*a*) Reference is here made to section 91, *ante*, p. 92, and perhaps also to section 114, *post*, p. 116.

(*b*) This clause removes the difficulty raised by the decision in *Reg.* v. *Cotton*, 1 E. & E. 203; 28 L. J. M. C. 22; 32 L. T. (o.s.) 125; 7 W. R. 62; 5 Jur. (N.S.) 311; 23 J. P. 532. There certain brewers in the parish of R. poured refuse into a river in that parish, and thereby created a nuisance in a part of the same river in the parish of D., where there was a local authority whose jurisdiction did not include the parish of R. It was held that that local authority could not legally complain, and that the justices could make no order.

(*c*) See sections 91-103, *ante*, pp. 92-106.

(*d*) See as to this 22 & 23 Vict. c. 77. The nuisance authorities in the metropolis are, in the city of London the commissioners of sewers for the time being (section 2); and in the rest of the metropolis the vestries and district boards constituted under 18 & 19 Vict. c. 120 (s. 6).

Provision in case of two convictions for overcrowding.

109. Where two convictions against the provisions of any Act relating to the overcrowding of a house (*a*) have taken place within a period of *three* months (whether the persons convicted were or were not the same) *a court of summary jurisdiction* (*b*) may on the application of the local authority of the district in which the house is situated *direct* (*c*) the closing of the house for such period as the court may deem necessary.

(*a*) See section 91, *ante*, p. 92.

(*b*) See the definition in section 4, *ante*, p. 15.

(*c*) It is not stated how the direction is to be given. But it is presumed that the court must make an order, and for this purpose there must be a proper complaint, and the party complained of must be duly summoned and heard on his defence unless indeed the section means that the court can direct the closing of the house as part of the adjudication on the second information. The words, however, hardly support this construction.

The provision is discretionary upon the court.

Provision as to ships.

110. For the purpose of the provisions of this Act relating to nuisances (*a*), any *ship or vessel* lying in any river, harbour, or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a *house* within such district; and any ship or vessel lying in any river, harbour, *or other water*, not within the district of a local authority shall be deemed to be within the district of such local

Sect. 110. authority as may be prescribed by the Local Government Board (*b*), and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel *under the command or charge* (*c*) *of any officer* bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government.

(*a*) See section 91, *ante*, p. 92. For the provisions as to canal boats used as dwellings, see 40 & 41 Vict. c. 60, in the Appendix. As to persons suffering from an infectious disease on board a ship, see sections 125, 126, 137, *post*.

(*b*) The board are to prescribe this by an order, and have done so in several cases. There is some difficulty as to the distance out at sea. It has been considered that three miles from the shore is the proper limit, if indeed the water herein mentioned applies to the sea, which, it has been contended, should have been mentioned specifically, as it is in section 130, *post*. See the Territorial Waters Jurisdiction Act, 1878, 41 & 42 Vict. c. 73, which makes foreigners on board foreign ships, passing within three miles of the English coast, subject to the English criminal law.

As to the jurisdiction of a port sanitary authority, see section 288, *post*.

(*c*) These words are in addition to the terms used in the repealed Act, and prevent the exemption from operating in respect of government vessels lent to public bodies for special purposes.

Provisions of Act relating to nuisances not to affect other remedies.

111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right, remedy, or proceeding under any other provision of this Act or under any other Act, or at law or in equity (*a*):

Provided that no person shall be *punished* (*b*) for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment.

(*a*) See also sections 340 and 341, *post*.

A public or common nuisance is an offence against the public, being either the doing of a thing to the annoyance of all the King's subjects, or the neglecting to do a thing which the common good requires: 1 Hawk. P. C. Ch. 32, s. 4. The usual remedy for a public nuisance is by indictment; it may however be by presentment or sometimes by information, 3 Burn's Justice 1068; and it is punishable by fine or imprisonment or both. Whenever a special or particular damage is sustained by a private individual from a public nuisance an action for damages is maintainable provided that the damage is direct and substantial. *Addison on Torts*, p. 11; *Soltan* v. *De Held*, 2 Sim. (N.S.) 145; 21 L. J. Ch. 153; *Benjamin* v. *Storr*, L. R. 9 C. P. 400; 43 L. J. C. P. 162. An injunction may also be obtained to restrain the continuance of a public nuisance; but the Attorney-General must be a party to the proceedings unless the plaintiff have sustained special damage. *Soltan* v. *De Held*, *supra*; *Attorney-General* v. *Shrewsbury Bridge Company*, 51 L. J. Ch. 746; 46 L. T. (N.S.) 687; 30 W. R.

916; and see *Daniell's Chancery Practice*, p. 1483. For a private nuisance the remedy is by an injunction or for damages. Note to Sect. 111.

(*b*) Proceedings taken under the previous sections to procure proper privy accommodation or the removal of refuse, would not be considered as *punishment*. In *Reg.* v. *Wigg*, Salk. 460, it was held that a statutory provision which enabled swine kept in the streets of London to be seized and sold, did not prevent a party from being indicted for a common nuisance in so keeping them.

Offensive Trades.

112. Any person who, *after the passing of this Act* (*a*), establishes within the district of an urban authority, without their consent in writing (*b*), any offensive trade; that is to say, the trade of— Restriction on establishment of offensive trade in urban district.

Blood boiler, or
Bone boiler, or
Fellmonger, or
Soap boiler, or
Tallow melter, or
Tripe boiler, or
Any other noxious or offensive trade, business, or manufacture (*c*),

shall be liable to a *penalty* (*d*) not exceeding *fifty pounds* in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty (*d*) not exceeding *forty shillings* for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

(*a*) 11 & 12 Vict. c. 63, s. 64, provided for those businesses established since 1848 when that Act was passed, in the same manner as in the text, so that, probably, few of such businesses now exist in those districts without such consent.

(*b*) This Act does not, as 11 & 12 Vict. c. 63, did, prescribe how the consent should be given. The local authority should pass a resolution, and a copy of this resolution in writing, signed by their clerk, will doubtless be sufficient proof of consent.

(*c*) The offence would be committed by the establishment of the business, *i.e.*, by the beginning to work, and not by the mere erection of the building or premises. But notice of the objection to the establishment of the business should be given as soon as possible.

A cattle market company, cattle ever having been slaughtered in the market before, erected a building in which they allowed persons to slaughter cattle on payment of 2*s.* a head, the company finding the tackle attached to the building, but the persons slaughtering bringing their own implements. It was held that the company were liable to the penalty under the corresponding provisions of 11 & 12 Vict. c. 83, s. 61, for having established the business of slaughterers of cattle. *Liverpool Cattle Market Company* v. *Hodson*, L. R. 2 Q. B. 131; 36 L. J. M. C. 30; 8 B. & S. 184; 15 L. T. (N.S.) 534; 15 W. R. 563; 31 J. P. 245.

Note to Sect. 112.

The trade of a slaughterer of cattle, which was in the corresponding section of the former Act, is removed from this section, being specially provided for by sections 169, 170, *post*.

An injunction was granted to restrain a person from burning bricks on his own land so as to be a nuisance to a neighbour. *Walter* v. *Selfe*, 4 De G. & Sm. 323; 20 L. J. Ch. 433; 17 L. T. (o.s.) 103. But in *Cleeve* v. *Mahaney*, 25 J. P. 819, where the nuisance was temporary only, KINDERSLEY, V.C., refused to grant an interim injunction to enable the plaintiff to bring his action at law. He held that the question whether brick burning is a nuisance must depend upon circumstances, and that no general rule as to distance could be laid down. In *Hole* v. *Barlow*, 4 C. B. (N.S.) 334; 27 L. J. C. P. 207; 31 L. T. (o.s.) 134; 6 W. R. 619; 22 J. P. 530, in an action for a nuisance arising from the burning of bricks on the defendant's own land near to the plaintiff's dwelling-house, BYLES, J., told the jury that no action lay for the reasonable use of a lawful trade in a convenient and proper place, even though some one might suffer inconvenience from its being so carried on, and he left to the jury two questions: (1) was the place in which the bricks were burned a proper and convenient place for the purpose, and (2) if it was, was the nuisance such as to make the enjoyment of life and property uncomfortable? It was held that this was a proper direction. This case was overruled, however, by the Exchequer Chamber, in *Bamford* v. *Turnley*, 3 B. & S. 62; 31 L. J. Q. B. 286; 6 L. T. (N.S.) 721; 10 W. R. 803. There it was held that where a man by an act on his own land such as burning bricks, causes so much annoyance to another in the enjoyment of a neighbouring tenement as to amount *primâ facie* to a cause of action, it is no answer that the act was done in a proper and convenient spot, and was a reasonable use of the land. It was also held that the fitness of the locality does not prevent the carrying on of an offensive, though lawful trade from being an actionable nuisance; but whenever, taking all the circumstances into consideration, including the nature and extent of the plaintiff's enjoyment before the act complained of, the annoyance is sufficiently great to amount to a nuisance, an action will lie whatever the locality may be. An injunction was granted to restrain brick burning in *Beardmore* v. *Tredwell*, 9 Jur. (N.S.) 272; 31 L. J. Ch. 892; 3 Giff. 683; 7 L. T. (N.S.) 207; but the remarks of STUART, V.C., who followed *Hole* v. *Barlow*, *supra*, must also be read subject to the decision in *Bamford* v. *Turnley*. The latter case was followed in *Cavey* v. *Ledbitter*, 32 L. J. C. P. 104; 13 C. B. (N.S.) 470; 3 F. & F. 14; 9 Jur. (N.S.) 798, but ERLE, C.J., added that it would be a misdirection if the judge told the jury to consider solely the evidence adduced to show discomfort to the plaintiff, and not to take into their consideration any evidence showing that the act complained of was one of ownership on the part of the defendant, which was clearly lawful if it did not cause discomfort to a neighbour, and that it was done with full intention to prevent discomfort in respect of time and place and manner and degree. In *Wanstead Local Board* v. *Hill*, 13 C. B. (N.S.) 479; 32 L. J. M. C. 135; 7 L. T. (N.S.) 744; 11 W. R. 368, it was held that the business of *brick making* was not of itself a noxious or offensive business within the meaning of the corresponding clause in 11 & 12 Vict. c. 63. The court held, that the business must be of a noxious or offensive nature analogous to those specified at the beginning of the clause. WILLES, J., observed that "it is necessary to be extremely cautious in construing this Act, whereby trades are brought within the jurisdiction of justices." He said that "the substances which are dealt with in the trades which are specified, are substances which, without anything being done to them, must be, or by progress of time must necessarily become a nuisance and annoyance to the neighbourhood." Persons aggrieved by brick burning must therefore have recourse to their ordinary remedy by action for damages or an injunction. The principles on which an injunction will be granted or refused have been already indicated. An injunction was refused in *Luscombe* v. *Steer*, 17 L. T. (N.S.) 229; 15 W. R. 1191; and granted in *Roberts* v. *Clarke*, 18 L. T. (N.S.) 49; *Bareham* v. *Hall*, 22 L. T. (N.S.) 116; *White* v. *Jameson*,

ante, p. 98. In *Crawford* v. *The Hornsea Steam Brick and Tile Company*, 45 L. J. Ch. 432; 34 L. T. (N.S.) 923; 24 W. R. 422, when damages instead of an injunction were awarded, a memorandum of the decree was ordered to be endorsed on the plaintiff's title deed. Note to Sect. 112.

In *Cardwell* v. *Newquay Local Board*, 39 J. P. 742, the Court of Queen's Bench decided that they could not hold that a manufactory of manure was of itself a noxious and offensive trade, and there being no evidence of its being noxious or offensive to the locality, that no penalty was incurred. But such a manufacture may be within the provisions of the Alkali Act, mentioned below. In *Passey* v. *The Oxford Local Board*, 43 J. P. 622, the appellant set up the business of a rag and bone merchant, and the justices convicted him under this section, holding as a fact that the business was noxious and *ejusdem generis* with those specified in the action. It was held that the conviction was right. In *Boyton* v. *Braintree Local Board*, 47 J. P. 728, the Essex Quarter Sessions held that this section did not apply to the keeping of a fried fish shop.

It is of course impossible to enumerate the various trades which may be noxious or offensive within the meaning of this section. Nor are the cases in which the court have interfered at the suit of the persons aggrieved any guide in the determination of the question whether such trades are noxious or offensive, for a trade not noxious may be so conducted as to be an actionable nuisance, as has been already stated with reference to brick burning. Reference may be made to the following cases as instances of actionable nuisances arising from trades or manufactures: vapours and smells from candle making, *Bliss* v. *Hall*, 4 Bing. N. C. 183; vapours from arsenic works, *Reg.* v. *Garland*, 15 J. P. 260; vapours from copper works, *Bankart* v. *Houghton*, 28 L. J. Ch. 473; 27 Beav. 425; *St. Helen's Smelting Company* v. *Tipping*, 11 H. L. C. 642; L. R. 1 Ch. 66; the manufacture of manure from night soil, *Knight* v. *Gardner*, 19 L. T. (N.S.) 277; coke ovens, *Salvin* v. *The North Brancepeth Coal Company*, L. R. 9 Ch. 705; 44 L. J. Ch. 149; 31 L. T. (N.S.) 154; 22 W. R. 904; the manufacture of tar, sulphate of ammonia and anthracene, *Bigsby* v. *Dickinson*, 4 Ch. D. 24; 46 L. J. Ch. 280; 35 L. T. (N.S.) 679; 25 W. R. 89, 122; chemical works, *Brooke* v. *Wigg*, 8 Ch. D. 510; 47 L. J. Ch. 749; 38 L. T. (N.S.) 732; 26 W. R. 729.

It is well to consider that the consent of the local authority can have no other effect than to render the establishment of a noxious trade no breach of the above enactment. It will not legalize what would otherwise be actionable or illegal. It is possible that a business above referred to may be carried on so as not to amount to a nuisance at common law; but the statute forbids the very establishment of it without the consent of the authority, and if, when established with their consent, the business is so carried on as to be a nuisance, the ordinary remedies (see section 111, *ante*, p. 112), will be available against the person so carrying it on.

The Alkali Works Regulation Act, 1881, 44 & 45 Vict. c. 37, regulates certain noxious or offensive trades, and is set out in the Appendix. See also the Explosives Act, 1878, 38 & 39 Vict. c. 17, and the Acts relating to the storing and safe keeping of petroleum, 34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; 44 & 45 Vict. c. 67, in the Appendix.

For the powers and duties of local authorities as to bakehouses, see the Factories and Workshops Act, 1878, Amendment Act, 1883, in the Appendix.

(*d*) There will be some difficulty in applying the latter part of the section, as it deals with continuing offences. As to the recovery of the penalty, see section 251, *post*.

113. Any *urban* authority may from time to time make *bye-laws* (*a*) with respect to any *offensive trades* (*b*) established with their consent either before or after the passing of this Act (*c*) in Bye-laws as to offensive trades in urban district.

Sect. 113. order to prevent or diminish the noxious or injurious effects thereof.

(*a*) See sections 182-6, *post*, as to the making, confirmation and publication of bye-laws, and section 251, *post*, as to the enforcing of them.

The Local Government Board have issued model bye-laws under this section, in respect of certain trades.

(*b*) These words are general, and are not confined to any specified trades.

(*c*) Hence the bye-laws can only apply to any newly-established trades, *i.e.*, to trades established since 1848. See note (*a*) to section 112, *ante*, p. 113.

Duty of urban authority to complain to justice of nuisance arising from offensive trade.

114. Where any candle-house, melting-house, melting-place, or soap-house, *or any slaughter-house*, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place, used for any trade, business, process, or manufacture causing effluvia (*a*), is certified to any *urban* authority by their medical officer of health, or by any two *legally qualified medical practitioners* (*b*), or by any ten inhabitants (*c*) of the district of such urban authority, to be a nuisance or injurious to the health (*d*) of any inhabitants of the district, such urban authority *shall* (*e*) direct complaint to be made before a justice, who *may* summon the person by or on whose behalf the trade so complained of is carried on to appear before *a court of summary jurisdiction* (*f*).

The court *shall* inquire into the complaint, and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district (*g*), *and* unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia (*h*), the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall be liable to a penalty (*i*) not exceeding *five* pounds nor less than *forty* shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of *two hundred pounds* (*k*):

Provided, that the court *may* suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and *order* to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or

if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act (*l*). Sect. 114.

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior court of law or equity against any person in respect of the matters alleged in such certificate (*m*).

(*a*) It will be observed that these trades are not all enumerated in section 112, and that there is no limitation in this section as to the time when they were established.

(*b*) By 21 & 22 Vict. c. 90, s. 34, these words mean "persons registered under that Act."

(*c*) It is presumed that this word here applies to *residents* in the district—inhabitants.

(*d*) If the effluvia amount to a nuisance in the sense of causing annoyance and discomfort, it is sufficient to bring the trade within this section without proving also that injury to health results from such effluvia. *The Malton Board of Health* v. *Malton Farmers' Manure Company*, 4 Ex. D. 302; 49 L. J. M. C. 90; 40 L. T. (N.S.) 755; 27 W. R. 802; 44 J. P. 155. This case has been followed with reference to similar words in sections 47 and 49, *ante*.

(*e*) These words are imperative. It therefore appears that the local authority must proceed. If they do not, they will be in default, and the consequences thereof appear in section 299, *post*. They should, however, have a proper certificate in writing, supported by some reasonable evidence to satisfy them as to the propriety of taking the requisite steps.

(*f*) See the definition in section 4, *ante*, p. 15. Though the court must inquire into the complaint, still a *primâ facie* case should be laid before it so as to justify a summons.

(*g*) See note (*d*), *supra*.

(*h*) The burden of proving this is on the defendant. It was on the complainant under 18 & 19 Vict. c. 121, s. 27.

(*i*) See as to the recovery of this penalty section 251, *post*. It is to be observed that although by the text the penalty is not to be less than 40*s*., yet the court has power to reduce that amount in the case of a first conviction under the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 4.

(*k*) The difficulties which formerly existed in 18 & 19 Vict. c. 121, s. 27, have not been removed in this section. It does not appear what is to be done as to the removal of the suspension referred to in the following paragraph, if the works be executed according to the order of the court, or if they be not executed, or if the means prescribed by the court fail to effect their object. Probably the court should adjourn the hearing, and after the adjournment, if the works have been done and the nuisance abated, the court might exercise their power under the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 16, which empowers them without proceeding to conviction to dismiss the information with or without payment of damages or costs. Unless, however, there be some determination of the information, there can be no appeal, for in default of the determination of the court there is no cause of appeal. There cannot therefore be a *suspension* of the final determination in order to enable the defendant to appeal. By suspension is understood that the court may withhold their order, so as to see whether the party complained of will carry out the directions as to abating the nuisance.

(*l*) See section 269, *post*, as to appeals.

(*m*) That is, in the High Court of Justice, but the authority should carefully weigh the consequences, and be prepared to pay the costs on failure of the proceedings.

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Power to proceed where nuisance arises from offensive trade carried on without district.

115. Where (*a*) any house, building, manufactory or place, which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated *without such district*, such urban authority may take or cause to be taken any proceedings by that section authorized in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house, building, manufactory or place, were situated *within such district;* so, however, that summary proceedings (*b*) shall not in any case be had otherwise than before a court having jurisdiction in the district where the house, building, manufactory or place is situated.

This section shall extend to *the metropolis* (*c*) so far as to authorize proceedings to be taken under it by any *nuisance authority* (*d*) in the metropolis in respect of any house, building, manufactory or place, which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any *urban* authority in respect of any house, building, manufactory or place, which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority in the metropolis for the execution of the Nuisances Removal Act for England, 1855, and the Acts amending the same (*d*).

(*a*) This is a new clause which in the first part removes the doubt which appears to have existed as to whether 18 & 19 Vict. c. 121, s. 27, had any operation in respect of trades carried on *without* the district of the local authority.

(*b*) That is under section 251, *post.*

(*c*) See the definition in section 4, *ante*, p. 3. The provisions of 18 & 19 Vict. c. 121, s. 27, are still in force in the metropolis. See Schedule V., *post.*

(*d*) As to nuisance authorities in the metropolis, see section 108, note (*d*), *ante*, p. 111.

Unsound Meat, &c.

Power of medical officer of health to inspect meat, &c.

116. Any medical officer of health or inspector of nuisances may at all *reasonable times* (*a*) inspect and examine any *animal* (*b*), carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk (*c*) exposed for sale, or deposited in any *place* (*d*) for the purpose of sale, or of preparation for sale, and

intended for the food of man (*e*), the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk, appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice (*f*). Sect. 116.

(*a*) 18 & 19 Vict. c. 121, s. 11, enabled a justice to grant a warrant to justify the entry for the purpose of inspection; no such provision is now made, but if admission is prevented the party prevented is rendered liable to a penalty under section 118, *post*, p. 121.

Sunday is not necessarily an unreasonable time. This question must depend upon the circumstances of the case. *Small* v. *Buckley*, 32 L. T. (N.S.) 726; 39 J. P. 422. In that case the appellant, a butcher, at his residence half a mile from his shop, on a Sunday afternoon, was requested to go himself, or send some one with the key, to admit the inspector of nuisances to his shop, in order that some meat there might be examined. He refused, and was convicted under 26 & 27 Vict. c. 117, s. 3, of preventing, obstructing, or impeding the inspector when duly engaged in carrying into execution the provisions of that Act. It was held that although Sunday afternoon might under some circumstances be a reasonable time for examining the meat, the appellant at most had refused to assist the inspector, and had not prevented, obstructed, or impeded him within the meaning of the section.

(*b*) In *Moody* v. *Leach*, 44 J. P. 459, the Recorder of Southampton, in a case tried before him at quarter sessions, held that the word *animal* included a live animal. According to the opinions of Drs. Letheby and Tody, given in evidence in a case reported at 37 J. P. 267, an animal killed immediately before or during or after parturition is unfit for human food.

(*c*) It is to be noticed that these words are specific and do not include every kind of food. The bye-laws of municipal corporations sometimes provide for the seizure of unwholesome food; and in *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. M. C. 18; 33 L. T. (N.S.) 506; 24 W. R. 57; 39 J. P. 773, a defendant was held to be rightly convicted under such a bye-law for selling unwholesome cheese. But cheese is not mentioned in this section. And the stipendiary magistrates at Manchester and Leeds have respectively held that the section does not extend to putrid butter or bad eggs exposed for sale. *Stone's Justices' Manual*, p. 692, and 43 J. P. 677.

(*d*) This word is used in a general sense and is not qualified here: *Young* v. *Grattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67; 33 J. P. 260. In *Daly* v. *Webb*, 4 Ir. Rep. C. L. 309, diseased meat placed upon a cart when passing along the streets of the city of Dublin from a slaughter-house to a place for the manufacture of preserved meats, was held to have been properly seized under a similar section in 26 & 27 Vict. c. 117, s. 2.

(*e*) It must be carefully noticed that the provision does not apply to food for animals, nor to articles prepared for exportation, for manure or similar purposes.

(*f*) The responsibility and the duty are imposed on the medical officer or inspector of satisfying himself that the article in question is exposed for sale or deposited for sale, or of preparation for sale and intended for the food of man, and if he is so satisfied he may seize. But it is not necessary for him to give notice to the owner of the goods seized, nor is the justice before whom the goods are taken bound to summon the owner before the condemnation thereof,

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as provided by the next section. *White* v. *Redfern*, 5 Q. B. D. 15; 49 L. J. M. C. 19; 41 L. T. (N.S.) 524; 28 W. R. 168; 44 J. P. 87.

The officer cannot himself destroy the articles seized. He must take them to be dealt with by a justice under the next section.

There must be a proper seizure to justify subsequent proceedings under the next section. See *Vinter* v. *Hind*, cited in the note to section 117.

Power of justice to order destruction of unsound meat, &c.

117. If it appears to the justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he *shall condemn the same*, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man (*a*); and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found (*b*), shall be liable to a penalty (*c*) not exceeding *twenty* pounds for every animal, carcase, or fish, or *piece of meat* (*d*), flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than *three months*.

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place.

(*a*) All the justice has to do is to inspect the article, and if he is satisfied that it is unsound or unwholesome he is to condemn it, and order it to be destroyed or disposed of so as to prevent its being used for human food. He need not before so doing give notice to or summon the owner. See *White* v. *Redfern*, section 116, note (*f*).

Several questions of difficulty may arise after the condemation of the goods seized. It may transpire that the goods were not properly seized, as in *Vinter* v. *Hind* (*infra*), or that they were not intended for the food of man or the like. In such a case what is the remedy by the owner? According to the judgments in *White* v. *Redfern*, he might claim compensation under section 308.

(*b*) In *Reg.* v. *Blount*, 43 J. P. 383, the defendant was charged with having unlawfully exposed or deposited for sale or preparation for sale certain meat intended for human food. The magistrate dismissed the charge on the ground that the defendant was himself unaware of the fact that the meat was upon his premises, as it had arrived there and had been seized in his absence. Subsequently a summons was issued against the defendant in respect of the same seizure for having on his premises meat for the purpose of sale, &c., and the same evidence was given as that adduced on the first charge. The defendant was convicted on the second summons, but the court quashed the conviction on the ground that the defendant might have been convicted of the offence charged on the second summons when he appeared upon the first, and that the second summons was for the same matters. The court seem to have considered therefore that the section created only one offence. But in *White* v. *Redfern*, 49 L. J. M. C. at p. 22, FIELD, J., said that the section created two offences. It

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will be prudent, therefore, in issuing a summons to confine it to one offence, otherwise a conviction founded upon it may be bad for duplicity.

(*c*) As to the recovery of this penalty, see section 251, *post*. Questions will arise whether, before the defendant can be convicted the prosecutor can prove knowledge on the part of the defendant, or whether if the defendant prove ignorance of the state of the article he is entitled to be discharged. On this point see *Reg.* v. *Blount*, *supra*; and as to the general rule of law as to guilty knowledge, see *Nicholls* v. *Hall*, L. R. 8 C. P. 322; 42 L. J. M. C. 105; 28 L. T. (N.S.) 473; 21 W. R. 579; 37 J. P. 424; *Reg.* v. *Prince*, L. R. 2 C. C. R. 154; 44 L. J. M. C. 122; 32 L. T. (N.S.) 700; 24 W. R. 76; 39 J. P. 676; *Hearne* v. *Garton*, 2 E. & E. 66; 5 Jur. (N.S.) 648; 28 L. J. M. C. 216; 33 L. T. (O.S.) 256; 7 W. R. 566; 23 J. P. 693; *Bosley* v. *Davis*, 1 Q. B. D. 84; 45 L. J. M. C. 27; 33 L. T. (N.S.) 528; 24 W. R. 140; 39 J. P. 774.

From the judgment of STEPHEN, J., in *Vinter* v. *Hind*, *infra*, it appears that the defendant cannot, in a prosecution under this section, call evidence for the purpose of showing that the meat which has been condemned was not in fact unsound. It was decided in the same case, however, that the defendant cannot be convicted unless there has been a proper seizure. There the respondent, a butcher, exposed for sale part of a cow which had died of disease, and sold the meat to a customer, who took it home for food, and some days afterwards at the request of the appellant, an inspector of nuisances, handed it over to him, and it was condemned by a justice as unfit for the food of man. It was held that the meat was not so seized and condemned as is prescribed by section 116, and the defendant could not for that reason be convicted under this section. *Vinter* v. *Hind*, 10 Q. B. D. 63; 31 W. R. 198; 48 L. T. (N.S.) 359; 47 J. P. 373.

(*d*) Each separate exposure of a piece of bad meat is a separate offence in respect of which a penalty and costs can be imposed. *In re Hartley*, 31 L. J. M. C. 232; 26 J. P. 438.

Penalty for hindering officer from inspecting meat, &c.

118. Any person who in any manner *prevents* (*a*) any medical officer of health or inspector of nuisances from entering any *premises* (*b*), and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who *obstructs or impedes* (*a*) any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding *five* pounds (*c*).

(*a*) See *Small* v. *Bickley*, *ante*, p. 119, as to what does not amount to a preventing, &c., under this section. There must be some active step in the way of prevention or obstruction. See the next section as to search warrants by justices.

(*b*) See the definition in section 4, *ante*, p. 6.

(*c*) See, as to the recovery of this penalty, section 251, *post*.

Search warrant may be granted by a justice.

119. On complaint made *on oath* (*a*) by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has

Sect. 119. reason for believing that there is kept or concealed (*b*) any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, which is intended for sale for the food of man, and is diseased, unsound, or unwholesome, or unfit for the food of man; and to search for seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds (*c*).

(*a*) See 13 & 14 Vict. c. 21, the effect of which is stated, *ante*, p. 106. An affirmation may be made by persons entitled to affirm instead of an oath by virtue of this statute.

(*b*) This clause appears to apply to cases where these articles are not actually exposed for sale, and where it is difficult to allege that they are deposited for the purpose of sale in the terms of section 116. If the officer suspects concealment he cannot enter forcibly until he obtains a warrant under this section.

There is no penalty imposed in this case for the mere concealment of the article. To subject the party to a penalty there must have been an exposure for sale or some other act such as is made an offence by one of the previous sections.

As to the common law offences of knowingly exposing for sale in a public market unsound and unwholesome meat, see *R.* v. *Stevenson*, 3 F. & F. 106. It was then held that a meat salesman might be indicted and convicted at common law for knowingly sending or exposing meat for sale in a public market as fit for human food when in fact it was not so. See also *Reg.* v. *Jarvis*, *ib.* 108. But in *Reg.* v. *Crawley*, *ib.* 109, it was held that a person is not indictable for sending to a meat salesman meat he knows to be unfit for human food, if he does not know and does not intend that it is to be sold as human food.

A person who deals in food of any kind is liable to an action for damages if he sells unwholesome food; but a private person, other than a dealer or trader, is not so liable in the absence of a warranty. *Burnby* v. *Bollitt*, 17 L. J. Ex. 190; 11 Jur. 827; 16 M. & W. 644. But it would seem that even in the case of a dealer, there must be either a warranty or knowledge that the food is unwholesome. Thus it was held that the sale of a carcase by a meat salesman, with a latent taint of which he was ignorant, and which he had no means of knowing, did not make him liable for it, nor import any warranty that the meat was fit for human food. *Everton* or *Emmeston* v. *Matthews*, 31 L. J. Ex. 139; 5 L. T. (N.S.) 681; 10 W. R. 346; 8 Jur. (N.S.) 61; 26 J. P. 566. See also *George* v. *Skivington*, L. R. 5 Ex. 1; 39 L. J. Ex. 8; 21 L. T. (N.S.) 495; 18 W. R. 118, where a chemist was held liable for negligence in the preparation of a chemical compound which caused injury.

See further as to the sale of unwholesome meat and provisions, 10 & 11 Vict. c. 14, s. 15, in the Appendix, and the Acts relating to the adulteration of food and drugs, also in the Appendix. See also the case of *Shilleto* v. *Thompson*, *ante*, p. 119, as to liability for selling unwholesome food contrary to a bye-law of a municipal corporation.

(*c*) See, as to the recovery of this penalty, section 251, *post*.

Infectious Diseases and Hospitals (*a*).

Provisions against Infection.

120. Where any *local* authority are of opinion, on the certificate of their medical officer of health or of any other *legally qualified medical practitioner* (*b*), that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it *shall be the duty* of such authority (*c*) to give notice (*d*) in writing to the owner *or* occupier (*e*) of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice (*f*).

Sect. 120. Duty of local authority to cause premises to be cleansed and disinfected.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than *one shilling* and not exceeding *ten shillings* (*g*) for every day during which he continues to make default; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default *in a summary manner*.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, *with his consent* cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

(*a*) The provisions of this part of the Act are extended to canal boats by the Canal Boats Acts, which are set out in the Appendix.

(*b*) This means a registered medical practitioner; see 21 & 22 Vict. c. 90, s. 34.

(*c*) This is imperative. The consequences of default appear in section 299, *post*. Reference may also be made to the Vaccination Act, 1867, 30 & 31 Vict. c. 81, s. 28, with reference to the spread of small-pox.

(*d*) As to the authentication and service of this notice, see sections 266, 267, *post*.

(*e*) The local authority have a choice to select either the owner or the occupier, but the owner will often be unable to execute the direction, and this should be considered by the local authority before it is decided to serve the notice on him. As to the definition of *owner*, see section 4, *ante*, p. 6.

(*f*) Section 46, *ante*, p. 57, contains provisions for the cleansing of houses in a filthy condition, where, on the certificate of any two medical practitioners, it appears to the local authority that the health of any person is affected or endangered, or when such cleansing would tend to prevent or check infectious disease. See also sections 80 and 84, *ante*, as to the giving of notices and

Note to Sect. 120.

taking precautions in case of infectious disease in a common lodging-house, and section 90, which contains provisions with reference to the making of bye-laws as to houses let in lodgings.

(*g*) See as to the recovery of this penalty, section 251, *post*. It is to be observed that though the text provides for a fine not less than one shilling, it may be still further reduced under the powers given to courts of summary jurisdiction by the Summary Jurisdiction Act, 1879.

Destruction of infected bedding, &c.

121. Any *local* authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any *dangerous* (*a*) infectious disorder, and may give compensation for the same (*b*).

(*a*) This word is introduced to restrict the application of the section to the class of infectious disorders which endangers life. See as to common lodging-houses, sections 80, 84, *ante*, and as to houses let in lodgings, section 90, *ante*, p. 89.

(*b*) See section 308, *post*, but observe that compensation under that section is limited to cases where the person who suffers damage is not himself in default. The expenses incurred under these sections in urban districts are payable out of the general district fund (section 207, *post*); in rural districts they constitute general expenses (section 229, *post*).

Provision of means of disinfection.

122. Any *local* authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected *free of charge*.

It is presumed that the local authority, not being absolutely bound to disinfect or supply an ambulance, may prescribe a charge to be paid by persons competent to pay for these conveniences.

Provision of conveyance for infected persons.

123. Any *local* authority may provide and maintain a *carriage* or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

See section 121, note (*b*), and the note to section 122, *ante*. As to the power of the Metropolitan Asylum Board to provide ambulances in the metropolis, see 42 & 43 Vict. c. 54, s. 16.

Removal of infected persons without proper lodging to

124. Where any suitable hospital *or place* (*a*) for the reception of the sick is provided within the district of a *local* authority, or within a convenient distance of such district, any person who is suffering from any *dangerous* (*b*) infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by

more than one *family* (*c*), or is on board any ship or vessel (*d*), may, *on a certificate signed by a legally qualified medical practitioner* (*e*), and with the consent of the superintending body of such hospital or place (*f*), be removed, by order of *any* justice, to such hospital or place at the cost of the *local* authority; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority (*g*). Sect. 124. Removal to hospital by order of justice.

An order under this section may be addressed to such constable or officer of the local authority as the justice *or local authority* (*h*) making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a *penalty not exceeding ten pounds* (*i*).

(*a*) This word is very general, and has been construed to apply to the infirmary or sick wards of a workhouse. 29 & 30 Vict. c. 90, s. 27, required the place to be within the district; this restriction is removed, and it may be without the district if within a convenient distance. It will be for the justices to decide whether the place is suitable when making the order.

(*b*) Note the introduction of this word. There are several infectious diseases which are not of themselves dangerous and do not require this special interposition.

(*c*) Notice has already been drawn to the ambiguity of this word in note (*a*) to section 77, *ante*, p. 84.

(*d*) See as to persons suffering from infectious disease in canal boats, the provisions of the Canal Boats Acts in the Appendix.

(*e*) That is, one registered under 21 & 22 Vict. c. 90, s. 34.

(*f*) It is presumed that a general consent will suffice, otherwise the removal would be in many cases impracticable.

(*g*) See section 84, *ante*, p. 87. The latter provision referring to the common lodging-houses is new.

(*h*) These words are to be read *reddendo singula singulis*. The justice is to determine when he makes the order, and the local authority when they make it. The person suffering from the disorder has no option as to his removal, if an order be made.

(*i*) In *Booker* v. *Taylor*, reported in the *Times* of November 21st, 1882, there had been an order for the removal of a child under this section. The mother of the child resisted the removal, and was summoned for so doing. At the hearing the magistrates entered into the validity of the order and declined to convict, but the court held they were wrong in so doing, that they had no right to go behind the order and enter into its validity, and that they were bound upon the evidence to convict if there had been an obstruction.

125. Any *local* authority *may* make regulations (*a*) (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients (*b*), and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a *dangerous* infectious disorder, and such regulations Removal to hospital of infected persons brought by ships.

Sect. 125. may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence (*c*).

(*a*) As to the publication of these regulations, see section 188, *post*.
(*b*) That is under the last section or section 131, *post*, p. 129.
(*c*) See as to the recovery of penalties, section 251, *post*.

Penalty on exposure of infected persons and things.

126. Any person (*a*) who—

(1.) While suffering from any *dangerous* (*b*) infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street, public place, shop, *inn* (*c*), or public conveyance (*d*), or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering; or

(2.) Being in charge of *any person* (*e*) so suffering, so exposes such sufferer (*f*); or

(3.) Gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder (*g*),

shall be liable to a *penalty* not exceeding *five pounds* (*h*); and a person who, while suffering from any such disorder, enters any *public conveyance* without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance (*i*).

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected (*k*).

(*a*) It has been held to be an indictable offence to expose unnecessarily persons infected with small pox, whether produced by inoculation or otherwise, in the public streets. *R.* v. *Vantandillo*, 4 M. & S. 73; *R.* v. *Burnett*, *ib.* 272. These decisions were cases of exposing children while suffering from disease. The text applies not only to such cases but to adults exposing themselves.

In *Best* v. *Stapp* or *Staff*, 2 C. P. D. 191 *n.*, a person knowingly took a child recovering from small pox to a lodging at the seaside without communicating this fact, and the children of the lodging house keeper caught the infection and two of them died. It was held that an action for damages at the suit of the lodging house keeper was maintainable. Whether if there had been no knowledge on the part of the lodger the action could have been maintained, *query*.

(*b*) See section 124, note (*b*) *ante*, p. 125.

(*c*) The introduction of the shop and the inn is new. As to what is an inn, see section 128, note (*c*), *post*, p. 128. **Note to Sect. 126.**

(*d*) A public conveyance appears to be one which plies openly and publicly for passengers. A fly which is hired from an innkeper or jobmaster may possibly not be within the provisions of the section.

(*e*) This person may be an adult, as it seems, as well as a child.

(*f*) A medical man in practice in Tunbridge, sent a patient who was suffering from scarlet fever to the fever hospital there with a certificate, directing him to walk in the middle of the road and not to talk to anyone, but in consequence of an alleged informality in the certificate the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom after some delay he obtained an order for the man's admission to the hospital. He then returned with the patient to the police station to procure the ambulance to convey him thither. On an information against the medical man under this sub-section, the justices were of opinion that it was not proved before them that the medical man "had charge of" the patient, that he had not wilfully exposed the patient in any street or public place "without proper precaution," and that he had made the best use of the means at his disposal to prevent the spread of the fever, and they refused to convict him. It was held that the justices were right. *Tunbridge Wells Local Board* v. *Bisshopp*, 2 C. P. D. 187.

(*g*) It is presumed that this sub-section would cover the case of a fly hired for the conveyance of an infected person and subsequently let for hire without previous disinfection. During the recent epidemic of cholera in Egypt, the Local Government Board issued regulations under section 130, for the disinfection of rags from that country.

(*h*) As to the recovery of this penalty, see section 251, *post*.

(*i*) See the next section. It will be observed that this clause applies only to a public conveyance, as to which see note (*d*), *supra*. If a conveyance other than one which is within the meaning of this clause, was used without notification by a person suffering from an infectious disease, the owner would probably be entitled to recover as damages the expenses of its disinfection, on the principle of the decision in *Best* v. *Staff*, *ante*.

(*k*) See section 122, *ante*, p. 124.

127. Every owner or driver of a *public conveyance* (*a*) shall immediately provide for the disinfection of such conveyance after it has to his knowledge (*b*) conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding *five pounds* (*c*); but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section (*d*). Penalty on failing to provide for disinfection of public conveyance.

(*a*) See section 126, notes (*d*), (*g*), and (*i*).

(*b*) That is whether he has been aware of the persons having been infected at the time he was conveyed, or has only discovered it afterwards.

(*c*) See as to the recovery of this penalty, section 251, *post*.

(*d*) This will be an answer to any proceeding for disobedience of a hackney carriage bye-law, or to proceeding under 10 & 11 Vict. c. 89, s. 52.

128. Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any Penalty on letting

Sect. 128. *dangerous* infectious disorder, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a *legally qualified medical practitioner* (*a*), as testified by a certificate signed by him, shall be liable to a penalty not exceeding *twenty pounds* (*b*).

Houses in which infected persons have been lodging.

For the purposes of this section, the keeper of an *inn* shall be deemed to let for hire part of a house to any person admitted as a *guest* into such *inn* (*c*).

(*a*) That is a medical practitioner duly registered under 21 & 22 Vict. c. 90, s. 34.

(*b*) See as to the recovery of this penalty, section 251, *post*.

(*c*) An inn is defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are accommodated with lodgings, and whatsoever they reasonably desire for themselves and their horses while on their way. *Burn's Justice*, vol. i., p. 64; *R.* v. *Luellin*, 12 Mod. 445; *Thompson* v. *Lacy*, 3 B. & Ald. 283; *Reg.* v. *Rymer*, 2 Q. B. D. 136; 46 L. J. M. C. 108; 35 L. T. (N.S.) 774; 25 W. R. 415; 41 J. P. 199.

Penalty on persons letting houses making false statements as to infectious disease.

129. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within *six weeks* previously having been therein any person suffering from any *dangerous* (*a*) infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding *twenty pounds*, or to imprisonment, with or without hard labour, for a period not exceeding *one month* (*b*).

(*a*) See section 124, note (*b*), *ante*, p. 124.

(*b*) As to the prosecution for this offence, see section 251, *post*.

Power of Local Government Board to make regulations.

130. The Local Government Board may from time to time make alter and revoke such regulations (*a*) as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious diseases (*b*), and preventing the spread of cholera and such other diseases, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within *three miles* of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations (*c*).

Any person wilfully neglecting or refusing to obey or carry out

or obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding *fifty pounds* (*d*). Sect. 130.

(*a*) See the cholera regulations and the regulations as to the disinfection of Egyptian rags issued by the Local Government Board, July 12th, 1883. The memoranda affixed to these orders by the medical officer of the Board are also set out and should be carefully perused.

(*b*) As to what diseases are epidemic or endemic, see section 134, note (*a*), *post*, p. 131. Query, whether until publication in the *Gazette*, the regulations will have the force of law.

(*c*) See section 135, *post*, p. 132, and the note thereon. The publication in the *Gazette* is evidence of the making and issue of the regulations.

(*d*) See, as to the recovery of this penalty, section 251, *post*.

Hospitals.

131. Any *local* authority may (*a*) provide for the use of the inhabitants (*b*) of their district hospitals or temporary places for the reception of the sick, and for that purpose may— Power of local authority to provide hospitals.

Themselves build such hospitals or places of reception (*c*); or

Contract for the use of any such hospital or part of a hospital or place of reception (*d*); or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on (*e*).

Two or more *local* authorities may combine in providing a common hospital (*f*).

(*a*) This word is permissive; the section does not create a duty.

By 42 & 43 Vict. c. 54, s. 14, it is provided that if it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts relating to the relief of the poor, should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by order of the Local Government Board, transfer such hospital or building accordingly, and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution and order. If the same is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district, the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building. Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept and the application of the same so paid.

For the powers of the district asylums boards in the metropolis to provide hospitals, see 30 Vict. c. 6; 31 & 32 Vict. c. 122, s. 35; 32 & 33 Vict. c. 63;

Note to Sect. 131.

33 & 34 Vict. c. 18, ss. 1, 2; 34 & 35 Vict. c. 108, s. 10; 39 & 40 Vict. c. 61, ss. 40—42; 42 & 43 Vict. c. 6; 42 & 43 Vict. c. 54, s. 13.

(*b*) This word does not apply properly to paupers who are to be provided for by the board of guardians.

(*c*) It has already been observed that the local authority are merely enabled and not required to provide hospitals under this section. The statute will not therefore be any defence to an action against the authority, nor will it prevent an injunction from issuing against them if they erect a hospital for infectious disease so as to be a nuisance to any person. This was so held with reference to similar permissive provisions in the Metropolitan Poor Act, 1867, 30 Vict. c. 6, in *The Managers of the Metropolitan Asylum District* v. *Hill and Others*, 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. (N.S.) 653; 27 W. R. 617; 45 J. P. 664.

With regard to hospitals for small-pox or fever patients, it has been questioned how far they could be erected in a town. In *Baines* v. *Baker*, Amb. 159; 3 Alk. 750, the LORD CHANCELLOR refused an injunction to stay the erection of a small-pox hospital in Coldbath Fields in London, and referred to a case of *R.* v. *Frewen*, where on indictment for a nuisance in erecting such a hospital in Sussex, the defendant was acquitted. In *The Managers of the Kensington Sick Asylum District* v. *Gunter* (not reported), WICKENS, V.C., intimated an opinion in conformity with the previous decision. The rule in such cases seems to be that laid down by Lord BLACKBURN, in the *Metropolitan Asylum Board* v. *Hill*, *sup.*, "To gather together in one spot patients suffering from infectious disease is lawful, but it must be under such guards as not to endanger the public health by communicating this infectious disease; and as it seems to me, so as not to produce injury to the rights of the owners of adjoining property by producing a nuisance to it." In a Scotch case, *Mutter* v. *Fyfe*, 11 Ct. of Sess. Cas. 2nd series, 303, the Court of Session held that a cholera hospital was not necessarily a nuisance, and refused to restrain its erection.

The subsequent sections, 175, 176, enable the local authority to procure the land required for the site, and section 207 and the following sections provide for the cost.

(*d*) Before contracting for the use of any building other than a hospital or part of a hospital, it may be well to enquire whether there is any covenant which prevents the use of the premises as a hospital. The use of premises for this purpose has been held to be a *business* where the patients made small payments according to their means. *Bramwell* v. *Lacy*, 10 Ch. D. 691; 48 L. J. Ch. 339; 40 L. T. (N.S.) 361; 27 W. R. 463; 43 J. P. 446; *Portman* v. *The Home Hospitals Association*, W. N. 1879, p. 196.

(*e*) As to the power of guardians to subscribe towards the maintenance and support of a hospital or infirmary, see 14 & 15 Vict. c. 105, s. 4; 32 & 33 Vict. c. 63, s. 16; 42 & 43 Vict. c. 54, s. 10. As to the power of the metropolitan asylum board to contract with local authorities in the metropolis, see 42 & 43 Vict. c. 54, s. 15.

(*f*) There are not sufficient details provided here to enable this combination generally to be carried into practical operation, but if an agreement be properly drawn, it may be possible to effect a combination which will act satisfactorily.

Recovery of cost of maintenance of patient in hospital.

132. Any expenses incurred by a *local* authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a *pauper*, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within *six months* after his discharge from such hospital or place

of reception, or from his estate in the event of his dying in such hospital or place. Sect. 132.

This is a new provision. If paupers, *i.e.*, persons in receipt of relief, be received into such hospitals, arrangements should be made by the board of guardians for payment of the cost of their maintenance.

As regards a person not a pauper, he or the person at whose request he is placed in the hospital will be liable to pay the cost, and if he do not do so may be sued in any court for the recovery of debts, with this advantage, that whereas the usual statute of limitation for civil debts is six years, here it is six months.

Power to provide temporary supply of medicine.

133. Any *local* authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

This section is re-enacted from 31 & 32 Vict. c. 115, s. 10, but it is not easy to see how it is to be carried out. Apparently the object of the section is to secure the services of a competent person, and so far the Local Government Board can act, but they can hardly scrutinize the medicines. They may perhaps determine that no provision is required for the particular emergency.

As to the power of guardians to enter into similar arrangements with hospital authorities, see section 131, note (*e*), *ante*, p. 130.

Prevention of Epidemic Diseases.

Power of Local Government Board to make regulations for prevention of diseases.

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease (*a*), the Local Government Board (*b*) *may* make and from time to time alter and revoke regulations for all or any of the following purposes; (namely),

(1.) For the speedy interment of the dead; and

(2.) For house to house visitation; and

(3.) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

(*a*) *Epidemic diseases* are "those which prevail among a large portion of the people of a country, rage for a certain time, and then gradually diminish and disappear, to return again at periods more or less remote. Thus cholera and

Note to Sect. 134.

influenza lately appeared as epidemic diseases in this country, and the continued fevers called synochus and typhus, and what are termed the eruptive fevers, as scarlet fever, the small-pox, the measles, frequently prevail as epidemics in different parts of the country. It is essential to the medical notion of an epidemic disease, that it should be dependent on some common and widely extended cause, of a temporary in contradistinction to a persistent nature."

Endemic diseases are "those peculiar forms of disease which arise spontaneously, as it is termed, in a country, or in particular localities, and which are ordinarily produced by the peculiar climate, soil, air, water, &c. Thus ague is the endemic disease of marshy countries or localities, the swelled throat or bronchocele is endemic in the Alps, and the plica in Poland. The word bears pretty much the same signification in relation to the diseases of a country that the term *indigenous* does to its plants:" Penny Cyclopediæ, *in verbis*.

These diseases, however, must be *formidable*, which imply so extensive an existence as to create a very general alarm.

(*b*) It rests now with the Local Government Board to determine how far the nature of the disease and the extent of its prevalence is such as to require these extraordinary measures to be taken. They have absolute control over the regulations to be prescribed.

The metropolis is provided for by the Diseases Prevention Metropolis Act, 1883, 46 & 47 Vict. c. 35.

Publication of regulations and orders.

135. All regulations and orders so made by the Local Government Board shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

That is to say, the production of the *Gazette* shall be evidence of the making and issuing of the orders. But the copy produced must contain the imprint of the Queen's printer and purport to be published by authority. A conviction was quashed where a court of quarter sessions had received in evidence an entire page of the *Gazette* not containing these requisites. *Reg.* v. *Lowe*, 48 L. T. (N.S.) 768; 47 J. P. 535; 52 L. J. M. C. 122.

Local authority to see to the execution of regulations.

136. The *local authority* of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things as may be necessary for mitigating any such disease (*a*), or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation (*b*).

(*a*) The local authority are not confined to these regulations. They may also use all other measures which may be recommended to them in the emergency, not at variance with the official regulations.

(*b*) The costs of such prosecutions will be a legal charge on the funds of the authority prosecuting, in so far as they are not recovered from the defendants. The prosecutions in question will be under section 140, *post*, p. 134.

137. The local authority and their officers shall have power of entry (*a*) on any *premises* (*b*) or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid. Sect. 137. Power of entry.

(*a*) No warrant or previous demand is required. The refusal to admit will be a wilful obstruction within section 140, *post*, p. 134.
(*b*) See the definition of *premises* in section 4, *ante*, p. 6.

138. Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge *extra* for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick (*a*). Poor law medical officer entitled to costs of attendance on board vessels.

Where such services are rendered by any *medical practitioner* (*b*) who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed *twenty pounds*, be determined by *a court of summary jurisdiction* (*c*); and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

(*a*) It is not clear what is meant by this clause. The section is taken from 18 & 19 Vict. c. 116, s. 2. To whom are the charges to be paid? Apparently to the guardians of the union or parish, though the captain is to pay them. The proper meaning of the section appears to be that the captain shall pay to the guardians the extra charges of the medical officer, and the expenses of the treatment.
(*b*) He must be registered under 21 & 22 Vict. c. 90, s. 34.
(*c*) See the definition in section 4, *ante*, p. 15, and section 251, *post*, as to the mode of recovery. The only effect of this section is to provide the summary remedy, for the provision as to the charges is what the law would have recognized without this enactment.

139. The Local Government Board may, if they think fit, by order authorize or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to Local Government Board may

Sect. 139. prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof.

combine local authorities.

See the further provision in Part VIII., for the formation of unions of districts for any of the purposes of this Act.

Penalty for violating or obstructing the execution of regulations.

140. Any person who—

(1.) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,

(2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

See, as the recovery of this penalty, section 251, *post*.

MORTUARIES, &c. (*a*).

Power of local authority to provide mortuaries.

141. Any local authority may, and if required by the Local Government Board shall, *provide* (*b*) and fit up a proper place for the reception of dead bodies before interment (in this Act called a *mortuary* (*c*)), and may make *bye-laws* with respect to the management and charges for the use of the same (*d*); they may also provide for the decent and economical interment (*e*), at charges to be fixed by such *bye-laws*, of any dead body which may be received into a mortuary.

(*a*) The provisions of this Act as to mortuaries are extended to cemeteries by the Public Health (Interments) Act, 1879, 42 & 43 Vict. c. 31, *post*.

(*b*) See section 175, *post*, as to the provisions for acquiring land for a site. It will be observed that whereas formerly it was optional with the urban authority to provide a mortuary, now the Local Government Board can compel any local authority to provide one.

The section does not apply to the metropolis. 29 & 30 Vict. c. 90, ss. 27, 28, enables nuisance authorities in the metropolis to provide places for the reception of dead bodies.

(*c*) Mortuaries may also be provided under the Burial Acts, 15 & 16 Vict. c. 85, s. 42, and 16 & 17 Vict. c. 134, s. 7.

(*d*) See as to the making, &c., of bye-laws, sections 182—8, *post*. The Local Government Board have issued model bye-laws under the section. The memorandum attached to these bye-laws contains valuable suggestions as to the site and structure of the mortuary and as to the arrangements for its administration; these suggestions should be carefully considered before a mortuary is erected and before any rules are adopted for its management.

(*e*) Query, by whom? Apparently by the local authority.

Justice may in certain cases order removal of

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house

Sect. 142. dead body to mortuary.

or room, any justice may, on a certificate signed by *a legally qualified medical practitioner* (*a*), order the body to be removed, at the cost of the *local* authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of *the relieving officer* (*b*) to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer *in a summary manner* (*c*) from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding *five pounds* (*d*).

(*a*) That is, registered under 21 & 22 Vict. c. 90, s. 34. The provisions of this section are available only where there is a mortuary.

(*b*) This must be the relieving officer of the union or parish in which the mortuary is situated, and care must be taken to have the order of the justice served upon him, or otherwise to secure that he shall have notice of the case. He cannot recover the amount himself from the poor rate, but he can enter it in his accounts and receive the amount from the guardians. It is to be observed that this provision is confined to cases where the removal has been ordered by a justice. With reference to other cases the memorandum attached to the model bye-laws says, "It is to be observed that although 7 & 8 Vict. c. 101, s. 31, empowers the board of guardians to bury, at the cost of the poor rate, the body of any poor person which may be within their parish or union, there is no obligation upon them to incur the expense unless the body is lying in the workhouse or on premises belonging to the guardians. If, therefore, the body of a poor person has been received in the mortuary, it by no means follows that the guardians or their duly authorized officer could be rendered responsible for the observance of the bye-law prescribing the period within which the body must be removed. It is possible that cases may occur when this responsibility may attach to the guardians or their officer in consequence of the directions which they may have given in pursuance of the enactment above mentioned, and in all such cases the guardians or their officer, on being informed of the requirements of the bye-laws, would no doubt take steps to ensure compliance with these requirements. Where, however, the cost of burial is only partially defrayed out of the poor rates, the sanitary authority, in dealing with an application for permission to use the mortuary, may sometimes find it necessary to ascertain that the applicant is, either voluntarily or by obligation, in a position to control the arrangements with regard to the burial, and may therefore, in the event of permission to use the mortuary being granted at his request, be held liable for neglect to comply with the bye-law limiting the time within which the body should be removed. But upon the whole, it may reasonably be expected that the instances in which the sanitary authority may deem it incumbent upon them to enforce the bye-laws as to the removal of bodies will be extremely rare."

(*c*) See the definition in section 4, *ante*, p. 15, and the mode of recovery in section 251, *post*. If the guardians have paid the relieving officer he will prosecute the proceedings for their reimbursement.

(*d*) As to the recovery of this penalty, see section 251, *post*.

Sect. 143.

Power of local authority to provide places for post-mortem examinations.

143. Any *local* authority *may* provide and maintain a proper place (otherwise than at a workhouse or at a mortuary (*a*)) for the reception of dead bodies during the time required to conduct any *post-mortem* examination ordered by a coroner (*b*) or other constituted authority, and may make *regulations* (*c*) with respect to the management of such place; and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such *post-mortem* examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for *post-mortem* examinations when ordered by the coroner (*d*).

(*a*) This exception requires special attention. It is desired that places should be provided for the removal of dead bodies from the rooms of poor people when they die, and it would create on the part of the relatives a repugnance to such removal in many cases if a suspicion arose that such bodies might be subject to anatomical examination. 2 & 3 Will. 4, c. 75, provides for dissections, and should be carefully attended to. The corresponding section applicable to the metropolis is 29 & 30 Vict. c. 90, s. 28.

(*b*) See the statute 6 & 7 Will. 4, c. 89.

(*c*) These are not bye-laws requiring confirmation. See section 188, *post*, which, however, provides for the publication of these regulations.

(*d*) See 6 & 7 Will. 4, c. 89, s. 5; 7 Will. 4 & 1 Vict. c. 68.

PART IV.

LOCAL GOVERNMENT PROVISIONS.

Highways and Streets.

As to Highways.

Sect. 144. Powers of surveyors of highways and of vestries under 5 & 6 Will. 4, c. 50, vested in urban authority.

144. Every *urban* authority shall within their district, exclusively of any other person (*a*), execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of *surveyors of highways* under the law for the time being in force, save so far as such powers, authorities or duties are or may be inconsistent with the provisions of this Act (*b*); every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highways Act, 1835, or any Act amending the same (*c*) are vested in and given to the inhabitants in vestry assembled of any parish within their district (*d*).

All ministerial acts required by any act of parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint (*e*).

(*a*) This section determines the authority of a parish vestry, or a highway board, or a district board within the district of the urban authority.

It is right to observe that 25 & 26 Vict. c. 61, s. 41, provides that "any parish, or part of a parish, included in a highway district may adopt the Local Government Act in the same manner and under the same circumstances in and under which it might have adopted the same if it had not been included in such district; and upon such adoption being made, such parish or part of a parish shall cease to form part of such district, subject, nevertheless, to the payment of any contribution that may at the time of such adoption be due from such parish or part of a parish to the highway board." The Local Government Act here referred to is repealed by this Act, which provides, by section 272, *post*, for the formation of a local government district on resolution of the owners and ratepayers. When part of a parish is constituted a district under that section, the excluded portion may, under section 216, by resolution of the owners and ratepayers, become a highway parish. Otherwise, by the same section, it is for highway purposes to be considered to be part of the district. But this appears to be subject to the power to include it in a highway district under 25 & 26 Vict. c. 61, s. 5, and 27 & 28 Vict. c. 101, s. 5.

It will be observed that this section applies only to urban authorities, but the Local Government Board may invest a rural authority with the power of an urban authority under this section by order made under section 276, *post*. A

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rural authority which is or becomes co-incident in area with a highway district may obtain the powers of a highway board under the provisions of the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 3-5, set out in the Appendix.

(*b*) The powers and duties of a surveyor of highways depend upon 5 & 6 Will. 4, c. 50, and amending statutes. For further information on this subject reference must be made to treatises on highway law. There is one branch of the subject which requires notice here—viz., that relating to the liability of the urban authority as surveyors of the highways in cases of accident caused by the non-repair or by the improper condition or obstruction of the highways.

A surveyor of highways is not liable to an action for injury caused by the non-repair of the highways. *Young* v. *Davis*, 7 H. & N. 760; 8 Jur. (N.S.) 286; 31 L. J. Ex. 250; 10 W. R. 524; 6 L. T. (N.S.) 363; 26 J. P. 743; affirmed on appeal to the Exchequer Chamber, 2 H. & C. 197; 10 Jur. (N.S.) 79; 9 L. T. (N.S.) 145; 11 W. R. 735. The ground of this decision was that the surveyor had no liability other than that which has previously existed in the case of the inhabitants of the parish. It had already been decided that when the duty the neglect of which was the cause of action was one attaching to the inhabitants of a county, the remedy was by indictment and not by action (*Russell* v. *The Men of Devon*, 2 T. R. 667); and it was held that the county surveyor merely took the place of the inhabitants for the purpose of suing and being sued, but without any further liability. *Mackinnon* v. *Penson*, 9 Ex. 609; 18 Jur. 513; 23 L. J. M. C. 97; 18 J. P. 164. The same principles were held to govern the liability of the surveyor of highways.

These cases must be carefully distinguished from *Hartnall* v. *The Ryde Commissioners*, 33 L. J. Q. B. 39; 4 B. & S. 361; 8 L. T. (N.S.) 574; 27 J. P. 599; 10 Jur. (N.S.) 257, where town commissioners were held liable for an accident caused by their neglect of a duty imposed upon them in their corporate capacity by the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 49; and *Ohrby* v. *The Ryde Commissioners*, 33 L. J. Q. B. 296; 5 B. & S. 743; 10 Jur. (N.S.) 1048; 28 J. P. 663, where the accident arose from neglect of a similar duty imposed by section 52 of the same statute. For a judicial distinction see per WILLES, J., in *Parsons* v. *St. Matthew, Bethnal Green, infra*, and per KELLY, C. B., in *Wilson* v. *The Mayor of Halifax*, L. R. 3 Ex. 117; 37 L. J. Ex. 44; 17 L. T. (N.S.) 660; 16 W. R. 707.

The Metropolis Local Management Act, 1855, 18 & 19 Vict. c. 125, s. 90, contains provisions similar to that in the text transferring the liabilities of the surveyors of highways to the metropolitan vestries. It was held, with reference to that section, that the vestries were under no greater liability than the surveyor would have been, and that an action would not lie against them for an accident caused by the non-repair of a highway. *Parsons* v. *The Vestry of St. Matthew, Bethnal Green*, L. R. 3 C. P. 56; 37 L. J. C. P. 62; 17 L. T. (N.S.) 211; 16 W. R. 85; 32 J. P. 55. And see per LUSH, J., in *The Guardians of Holborn* v. *The Vestry of St. Leonard's, Shoreditch, ante*, p. 55. The pavement over a cellar in the metropolis has been held to be part of the highway. *Hamilton* v. *St. George's, Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 91; 29 L. T. (N.S.) 428; 22 W. R. 86; 38 J. P. 405.

The point was raised but not decided in *Wilson* v. *The Mayor of Halifax, supra*, whether a local board were liable to an action for injuries caused by non-repair of a highway. It was expressly decided that they were not in *Gibson* v. *The Mayor of Preston*, L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 10 B. & S. 942; 22 L. T. (N.S.) 293; 18 W. R. 689; 34 J. P. 342.

But where a heap of stones was left by the side of a road without light, and the plaintiff, on a dark night, drove his cart against it, and was upset and injured, the road being in the district in which the defendants were the local board, and the heap having been left there by the negligence of persons employed by them to repair the roads, it was held that the defendants were liable as the local board to an action for the negligence of their servants, and that they were not exempt from liability by reason of the corresponding

section of the Public Health Act, 1848, which imposed on them the same duties and liabilities as a surveyor of highways. *Foreman* v. *The Mayor of Canterbury*, L. R. 6 Q. B. 214; 40 L. J. Q. B. 138; 24 L. T. (N.S.) 385; 19 W. R. 719; 35 J. P. 629. The principle of this decision may be thus briefly stated. A surveyor of highways is liable to a stranger for any act of personal negligence or for the negligence of his own servants. The local board are in the same position, the only decision to the contrary, *Holliday* v. *St. Leonard's, Shoreditch*, 11 C. B. (N.S.) 192; 30 L. J. C. P. 361, being overruled by *The Mersey Docks* v. *Gibbs*, L. R 1 H. L. 93 (per BLACKBURN, J.). See also, per JAMES, L. J., in *Glossop* v. *The Heston and Isleworth Local Board*, 12 Ch. D. at p. 120. Note to Sect. 144.

A surveyor of highways is not liable for injuries caused by an obstruction left in the highway by the neglect of a contractor under him. *Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487; 43 L. J. Q. B. 168; 31 L. T. (N.S.) 184; 23 W. R. 4; 38 J. P. 599. In that case the defendant was surveyor of highways appointed by the vestry at a salary. By a resolution of the committee of management it was ordered that a part of a road should be raised for about 150 yards, and that defendant should employ men to do it. Defendant contracted with G. to do the work at so much per yard, the vestry finding the materials. G. proceeded to do the work, employing his own men. During the progress of the work one-half of the width of the road was raised first, and the other half left temporarily about a foot lower. No fence or light was put up to warn persons using the road at night, and the plaintiff, driving with a horse and dog-cart, was upset and injured. The defendant had not personally interfered in doing the work, or in directing the road to be left as it was. It was held that the defendant was not liable for the injury to the plaintiff either at common law or by reason of 5 & 6 Will. 4, c. 50, s. 56, the court holding that the persons whose negligence caused the accident were not servants of the defendant so as to bring him within *Foreman* v. *The Mayor of Canterbury* (*supra*). But in another action against the same defendant it appeared that the defendant set the work out, determined the levels, and superintended on behalf of the committee. As it was necessary that the work while in progress should be fenced and lighted at night, and the defendant had only contracted for labour, the duty of fencing and lighting remained on him, and he was held responsible for negligence in performing this duty, whereby the damage was caused. *Pendlebury* v. *Greenhalgh*, 1 Q. B. D. 36; 45 L. J. Q. B. 2; 33 L. T. (N.S.) 372; 24 W. R. 98; 40 J. P. 36.

Taylor v. *Greenhalgh* was afterwards reversed in the Court of Appeal (24 W. R. 311), but it is necessary to state it in full as decided in the Court of Queen's Bench, for the difference between it and *Pendlebury's Case* was not so much a difference on any point of law as a difference between the view taken by the Court of Queen's Bench of the facts then before it, and the view which the Court of Appeal took of the facts stated in the case subsequently before them. (Per Lord CAIRNS, C., 1 Q. B. D., at p. 40.) In *Reid* v. *The Darlington Highway Board*, 41 J. P. 581, a highway board finding that part of the wall of a bridge needed repair, instructed their surveyor to employ S., a contractor, to do the work. S. thereupon, by his servants, did the work, and the surveyor of the board did not interfere. In course of the work S.'s servants left stones in the highway, which were not lighted at night, and R., travelling in a gig, ran against them, and was injured. It was held that there was no evidence upon which the board or its surveyor could be held liable for the injury to R. As to the liability of the contractor in such a case, see *Black* v. *Thirst*, 2 H. & C. 20; 32 L. J. Ex. 188; 8 L. T. (N.S.) 251, which may be compared with the previous case of *Overton* v. *Freeman*, 11 C. B. 867; 21 L. J. C. P. 52.

But though a local board are not, in the cases already mentioned, liable for injuries sustained in consequence of their negligence as surveyors of highways, there are many cases where, by reason of their acting in other capacities, they may be liable for negligence which occasions injury to persons using the highway. In one case, as the plaintiff was riding along a highway, under which

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was a sewer, his horse trod on a grid or grating, put there to drain the surface water off the highway into the sewer. The grid being in a defective state gave way, and the horse's leg was injured. The plaintiff brought an action against the local board, who were surveyors of the highways under the Public Health Act, 1848, ss. 68, 117, and in whom the sewers were vested by sections 43, 45, of the same Act. It was held that, though the defendants were not liable as surveyors of the highways, they were liable as owners of the sewer, of which the grid formed part, for negligence in not keeping the grid in a proper state. *White* v. *The Hindley Local Board*, L. R. 10 Q. B. 219; 44 L. J. Q. B. 114; 32 L. T. (N.S.) 460; 23 W. R. 651; 39 J. P. 533. In another case the defendants, who were both the highway and the sewer authorities of West Derby, employed a contractor to construct a pipe-sewer under a highway within their district. The contractor in laying the pipes dug a trench, which he afterwards filled in with earth, and the roadway was apparently made good. The work was done under the directions and to the satisfaction of the defendant's surveyor. Some months after it was finished, a subsidence in the soil in the trench took place, without any assignable cause, leaving the road apparently sound. The plaintiff's horse, in consequence of the surface giving way, fell into the trench, and was injured. It was held that there was evidence that the work of filling in the trench had been negligently and improperly done; that the defendants were liable as the sewer authority, and, perhaps, also as the highway authority (the latter liability apparently depending on the negligence of the defendant's surveyor as in *Pendlebury* v. *Greenhalgh*, *supra*). *Smith* v. *The West Derby Local Board*, 3 C. P. D. 423; 47 L. J. C. P. 607; 38 L. T. (N.S.) 716; 27 W. R. 137; 42 J. P. 615. As to the liability of the contractor in such a case, see *Hyams* v. *Webster*, L. R. 4 Q. B. 138; 38 L. J. Q. B. 21; 9 B. & S. 1016; 17 W. R. 232. All, or nearly all, of the cases on the subject were reviewed in *The Borough of Bathurst* v. *MacPherson*, 4 App. Cas. 256; 48 L. J. P. C. 61; 41 L. T. (N.S.) 778; 43 J. P. 827, where a municipality in New South Wales were held in the Privy Council to be liable for an accident caused by a defective drain, the neglect to repair which had led to the falling away of the brickwork and the consequent formation of a dangerous hole in the road. *White* v. *The Hindley Local Board* was cited and approved of in *Blackmore* v. *The Vestry of Mile End Old Town*, 9 Q. B. D. 451; 51 L. J. Q. B. 496; 46 L. T. (N.S.) 869; 30 W. R. 740; 47 J. P. 52. In that case a water meter, which was the property of a water company, and used for measuring the water supplied by the company to the defendants, the vestry of a metropolitan parish, for watering the streets, was placed by the defendants in a box of theirs sunk in the footway of one of the streets, and covered with an iron flap. The defendants were surveyors of highways under 18 & 19 Vict. c. 120, s. 95, and were by section 116 authorized to cause the streets in their parish to be watered. The plaintiff while walking along the street stepped on the iron flap, and by reason of its having been worn smooth, and become slippery and dangerous, he fell and was injured. It was held that although the defendants might not be liable as surveyors of highways for negligence in not keeping the iron flap in a proper state, they were liable in their capacity as the authority for watering the street, in which capacity they had placed the iron flap there. In a still more recent case the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway, the valve cover projected an inch above it. The plaintiff's horse, using the highway, stumbled over the valve cover and was hurt. In an action against the defendants, who were both the water authority and the highway authority, for the injury to the horse, it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway, and that the plaintiff was entitled to recover. *Kent* v. *The Worthing Local Board*, 10 Q. B. D. 118; 52 L. J. Q. B. 77; 48 L. T. (N.S) 362; 31 W. R. 583; 47 J. P. 23. And a corporation may be liable for damages caused by non-repair of a road which they had agreed to repair under section 29 of the

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Tramways Act, 1870. *Howitt* v. *Nottingham Tramways Company*, 12 Q. B. D. 16; 53 L. J. Q. B. 21; 32 W. R. 248.

Trustees under a local Act were held not to be liable to be indicted for manslaughter for the death of a person in consequence of an accident caused by the non-repair of road which they were bound to repair under the Act. *Reg.* v. *Pocock*, 17 Q. B. 34.

Where a local authority are acting as surveyors of highways, and by so doing occasion damage to any person, they are not liable to compensate such person under section 308, *post*. In *Burgess* v. *The Northwich Local Board*, 6 Q. B. D. 264; 50 L. J. Q. B. 219; 44 L. T. (N.S.) 154; 29 W. R. 931; 45 J. P. 256, it appeared that a roadway had subsided on account of the abstraction of salt from under it, and the houses abutting on it had subsided also. The surface of the roadway remained continuous, so that traffic could pass along it as before, but the roadway was in a curved hollow, and at the level to which it had subsided was liable to be flooded so as to render traffic impossible. The defendants placed materials on the roadway, so as to make the surface immediately above the point of the lowest subsidence about 4 feet higher than at the commencement of the work. The plaintiffs having raised their houses simultaneously with the works to the roadway claimed compensation. It was stated as a fact in the case that, having regard to the obstruction to traffic caused by floods, the raising of the road was reasonably necessary to put it in a proper state for traffic; but excluding the consideration of the floods, the raising of the road to the extend described was not necessary to put the road into a proper state for traffic. It was held that, as the highway was vested in the defendants (section 149, *post*), no action of trespass could have been maintained by the plaintiffs, even if more materials had been placed in the roads than a surveyor of highways could justify, and that the plaintiffs had no right to have the road maintained at the level at which it accidentally and recently sank; and that the works of the defendants were not done "in exercise of any of the powers" of the Act within section 308, which mean powers created by the Act, and not merely powers transferred by section 144 from the surveyor to the local board, but were done, if not entirely in pursuance of their duty as surveyors of highways, at all events in exercise of such powers as surveyors of highways have, and consequently that the plaintiffs were not entitled to compensation. This decision seems to follow a dictum of BRAMWELL, L. J., in *Nutter* v. *The Accrington Local Board*, *post*, p. 145. In a recent case, where a road had subsided, and a restoration of the road to some extent had taken place not long afterwards, and forty years afterwards the road was raised, BOWEN, L. J., held that the burden of proof was upon the local board to show that they had simply restored the road to its original level, and in the absence of evidence, held that they were acting under the powers given by the Public Health Act, and liable to make compensation accordingly. *Pearson* v. *The Brierley Hill Local Board*, 52 L. J. Q. B. 529; 11 Q. B. D. 735; 49 L. T. (N.S.) 486; 32 W. R. 141; 47 J. P. 628.

The court will not grant an injunction to restrain a local board from removing an enclosure of the highway which amounts to a nuisance, if it is proved that the part enclosed is part of the highway. *Semble*, that the board have power as surveyors of highways to remove an obstruction after it has been judicially determined that there is an obstruction. *Bagshaw* v. *Buxton Local Board*, 1 Ch. D. 220; 45 L. J. Ch. 260; 34 L. T. (N.S.) 112; 24 W. R. 231; 40 J. P. 197.

The local board have not, as surveyors of highways, any authority over turnpike roads. Per BRAMWELL, B., in *Nutter* v. *Accrington Local Board*, 4 Q. B. D. at p. 388. And see section 148, *post*, and *The Justices of Lancashire* v. *The Mayor of Rochdale*, cited in the notes thereto.

It has been held that an action against a local authority as surveyors of highways may be commenced within the six months allowed by section 264, and need not be commenced within the three months prescribed by 5 & 6 Will. 4, c. 50, s. 109. *Taylor* v. *The Meltham Local Board*, 47 L. J. C. P. 12.

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In another case a local board in repairing a road negligently left a heap of stones upon it, whereby injury was caused to the plaintiff. It was held that the board were acting under the Public Health Act, 1875, and not under 5 & 6 Will. 4, c. 50, and that the period of limitation was, therefore, six and not three months. *Kay* v. *Atherton Local Board*, 42 J. P. 792. But when a corporation were made surveyors of highways by a local Act which made them subject to all such liabilities as any surveyors of highways were subject to by virtue of the law for the time being in force, and there was nothing to show that the corporation were acting under the Public Health Act, it was held by CAVE, J., that the period of limitation was three and not six months. *Burton* v. *The Corporation of Salford*, 11 Q. B. D. 286; 31 W. R. 315; 52 L. J. Q. B. 668; 49 L. T. (N.S.) 43; 47 J. P. 614.

As to the discretion of a local board as surveyors of highways when it is sought to make a road in their district a public highway, see *Reg.* v. *Dukenfield*, *post*, p. 170.

(*c*) The chief of these are 5 & 6 Will 4, c. 50; 4 & 5 Vict. c. 51; 8 & 9 Vict. c. 71; 25 & 26 Vict. c. 61; 27 & 28 Vict. c. 101; 28 & 29 Vict. c. 107; 41 & 42 Vict. c. 77; 45 & 46 Vict. c. 27.

The provisions for making highway rates are contained in sections 216, 217, *post*.

(*d*) By 5 & 6 Will. 4, c. 59, s. 29, the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, at a meeting specially called for that purpose, is necessary before the highway rate may exceed 2*s.* 6*d.* in the pound on the whole in any one year. It was held that this section was impliedly repealed by the provisions in the text in the case of a highway rate made by an urban authority under this Act. *Dyson* v. *The Greetland Local Board*, 47 J. P. 260; 48 L. T. (N.S.) 636, since affirmed in C. A.

(*e*) This paragraph is new. It supplements the previous passage.

Inhabitants of urban district not liable to rates for roads without district.

145. The inhabitants within *any urban district* shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways *without such district* (*a*): Provided that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any other made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district (*b*).

(*a*) See in section 216, *post*, the regulations applicable to parishes divided by the boundary of the urban sanitary district, whether in a highway district or out of it.

(*b*) As to which, see section 216.

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Power of urban authority to agree as to making of new public roads.

146. Any urban authority may agree (*a*) with any person for the *making* of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall *accordingly* (*b*) become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads (*c*).

(*a*) This agreement should be in writing and under seal. The section is incorporated from 21 & 22 Vict. c. 98, s. 39; but it is not quite easy to understand it. First, who is to make the road? Apparently the urban authority. Yet it is provided that they may agree to pay the person a portion of the expenses of making the road. Moreover, when the road is to be made at his expense, it would be reasonable that he should make it.

It is presumed that the person referred to is the owner of the land.

The section appears to apply to new roads, and not to existing roads.

(*b*) That is, in accordance with the agreement.

(*c*) It will be noted that the first agreement mentioned in the section may be made by the urban authority, and consequently by a mere majority of the board. But the latter agreement requires the consent of two-thirds of the members. The object of this is obviously to prevent jobbery in the matter.

Power of urban authority to construct or adopt public bridges, &c., over or under canals, &c.

147. Any urban authority may agree (*a*) with the proprietors of any canal railway or tramway to adopt and maintain any existing or *projected* bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors (*b*); they may also with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge viaduct or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto (*c*).

(*a*) This section is re-enacted from 21 & 22 Vict. c. 98, s. 40. It is not easy to see how the urban authority can adopt a *projected* bridge; but doubtless it means that if the projected bridge be made the local authority may adopt it afterwards.

(*b*) In this case the urban authority may construct the bridge and then claim payment of the expenses from the proprietors, but in the agreement other provisions may doubtless be made.

(*c*) Note the same difference as in the last section, note (*c*), with reference to the entering into these agreements.

Sect. 148. Power of urban authority to enter into agreements with turnpike trustees as to repair, &c. of roads.

148. Any urban authority may by agreement (*a*) with the trustees of any turnpike road, or with any person liable to repair any street or road, or any part thereof, or with the *surveyor* of any county bridge (*b*), take on themselves the maintenance repair cleansing or watering of any such street or road *or any part thereof* (*c*), or of any road over any county bridge, and the approaches thereto (*d*), or of any part of the said streets or roads within their district, and may remove any turnpike gates toll gates or bars which may be situated *within their district* (*e*), and may erect other turnpike gates toll gates or bars in lieu thereof, on such terms as the urban authority and such trustees or person or surveyor as aforesaid may agree on:

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least *two thirds* in value of the mortgagees; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorized by this Act (*f*).

Any executors administrators guardians trustees or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors administrators guardians trustees and committees so consenting are hereby severally indemnified for so doing (*g*).

(*a*) See as to this, section 146, *ante*, p. 143. 36 & 37 Vict. c. 90, s. 15, enables the value of turnpike trust debts to be ascertained by the Local Government Board when any local authority are desirous of taking upon themselves the repair of a turnpike road within their district, and provides for the acceptance by the trustees of such value and the cessation of tolls. They can also make apportionment where the trust extends beyond the district of the authority. And 37 & 38 Vict. c. 95, s. 11, provides that where the Local Government Board make such an order, they may by the same order declare to whom and in respect of what claim or claims the whole or any part of the value of such debt and liabilities is to be paid. 38 & 39 Vict. c. 114 (the Annual Turnpike Continuance Act, 1875—printed by some mistake with the local and personal statutes) by section 11, provides that where in a turnpike Act provision has been made that, in any place in which the Local Government

Act or any Act relating to the Public Health Act (*sic*) is from time to time in force, none of the tolls or moneys received by the trustees by virtue of such Turnpike Act shall be expended in maintaining, repairing, or improving any road within the limits of such plan, and that the trustees shall not take any toll or erect or continue any toll gate within such limits, the Local Government Board may, if they think fit, in any case in which a district has been constituted under the Sanitary Acts, whether by provisional order or otherwise, after the 24th June, 1875, declare by order that such provision shall be suspended during the whole or any part of the continuance of such Turnpike Act, and such provision shall be suspended accordingly. It may be added that where by any Annual Turnpike Continuance Act it is provided that no money shall be expended in the repair of any turnpike road, such turnpike road shall be deemed to be a highway, and shall be repairable as such (37 & 38 Vict. c. 95, s. 10). An agreement made before 31st December, 1870, under the corresponding section of the Act of 1858 does not prevent the roads from being turnpike roads within the meaning of the Highway Act, 1878, s. 13. *West Riding JJ.* v. *The Queen*, 8 App. Cas. 781; 32 W. R. 253.

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The turnpike trusts shall continue in force as to turnpike roads within an urban sanitary district. Per Lord BLACKBURN in *The Justices of Lancashire* v. *The Mayor of Rochdale*, 8 App. Cas., at p. 497. In that case the Corporation of Rochdale was the highway authority within the area of the borough. Under sections 47—50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) the obligation to repair all public highways within the area of the town was imposed upon the corporation, and the turnpike trustees were forbidden to lay out any money on any road within that area. By a local Act in 1872 the boundaries of the borough were enlarged, and all the provisions of the Act relating to the town were extended to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough and within the operation of 10 & 11 Vict. c. 34, ss. 47—50. It was held by the House of Lords that these further portions, being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within section 13 of the Highways and Locomotives (Amendment) Act, 1878; and that the county authority were not liable to pay half the expenses of their maintenance.

(*b*) The surveyor is substituted for the clerk of the peace, who usually represents the county in agreements. The surveyor must charge the county rate, but cannot properly do so without the direction of the county justices, for whom he must act in the matter.

(*c*) In *Nutter* v. *The Accrington Local Board*, 4 Q. B. D., at p. 380, MELLOR, J., expressed an opinion that these words did not authorize the division of the road into longitudinal sections, so that the local board should undertake the charge of the footpath, and the turnpike trustees that of the roadway. But at page 383, COTTON, L. J., expressed a contrary opinion.

(*d*) A bridge may be a county bridge though repairable by the inhabitants of a county or by an individual. *Reg.* v. *Chart and Longbridge*, L. R. 1 C. C. R. 237; 39 L. J. M. C. 137; 22 L. T. (N.S.) 416; 18 W. R. 791; 34 J. P. 454. In general, however, a county bridge is repairable by the inhabitants of the county. 5 & 6 Will. 4, c. 50, s. 21, provides that if any bridge shall thereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless that nothing therein contained shall extend to, or be construed to extend to, exonerate or discharge any county from repairing or keeping in repair the walls, banks or fences of the raised causeways and raised approaches to any such bridge on the land arches thereof. The way over a bridge built before the passing of this Act, and the approaches for a distance of 300 feet from each end of such

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bridge, are repairable by the county. See 22 Hen. 8, c. 5, s. 7. "When for any reason a public bridge is not considered a county bridge, and no other persons are by usage or prescription or statute bound to repair it, the liability falls upon the inhabitants of the parish in which it is situate as being a public highway." (Pratt's Law of Highways, 12th ed., by Prentice, p. 38.) 33 & 34 Vict. c. 73, s. 12, provides that where a turnpike road shall have become an ordinary highway all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: Provided that for the purposes of that Act such bridges shall be treated as if they were bridges built subsequently to the passing of 5 & 6 Will. 4, c. 50. This section was discussed in *Reg.* v. *Dorset* (*Inhabitants of*), 45 L. T. (N.S.) 308. There a toll bridge was built over the B. river at W. for the purpose of connecting the back streets of W. with the country districts on the other side of the river. A turnpike road was made in connection with the bridge; both the bridge and the road were constructed under one Act. There were separate trusts of the bridge and the road, but the trustees of the one were trustees of the other. The bridge was within the municipal boundaries of the borough of W. On the expiration of the trust the county repaired the road, but the bridge was allowed to fall into disrepair. The county of D. in which the bridge was situated was thereupon indicted for its non-repair and was found guilty. Held, upon the argument for a new trial, that the county was rightly convicted, and that, as there was nothing in the case to cast the liability to repair on the borough in which the bridge was situated, on the expiration of the period of the trust it became a county bridge repairable by the inhabitants of the county.

(*e*) These words remove the difficulty as to the measure of distance which occurred in 21 & 22 Vict. c. 38, s. 41.

(*f*) See sections 233, *et seq.*, *post*.

(*g*) 23 & 24 Vict. c. 68, s. 20, enabled the highway boards in South Wales to contract with the local board of health under the Public Health Act, 21 & 22 Vict. c. 98, for the repair of any highway under the care of such local board, who had all the responsibility of such repair, and the board contracted with was to be relieved therefrom during the pendency of the contract. The money to be paid under the contract was to come from the moneys applicable to the repair of such highways by the highway board. The urban authority is now substituted for such local board.

Regulation of Streets (*a*) *and Buildings.*

Vesting of streets, &c. in urban authority.

149. All streets (*b*), being or which at any time become highways repairable by the inhabitants at large (*c*) within any urban district, and the pavements stones and other materials thereof, and all buildings, implements, and other things provided for the purposes thereof, *shall vest in* and be under the control of the urban authority (*d*).

The urban authority *shall* (*e*) from time to time cause all such streets to be levelled, paved, metalled, flagged, channelled, altered, and repaired, as occasion may require; they *may* from time to time cause the soil of any such street to be raised, lowered, or altered, as they may think fit (*f*); and may place and keep in repair fences and posts for the safety of foot passengers (*g*).

Any person who without the consent of the urban authority wil-

fully displaces or takes up (*h*), or who injures the pavement, stones, materials, fences, or posts of, *or the trees*, in any such street, shall be liable to a penalty (*i*) not exceeding *five pounds*, and to a further penalty not exceeding *five shillings* for every square foot of pavement, stones, or other materials, so displaced, taken up, or injured; he shall also be liable in case of any injury to trees to pay to the local authority such amount of compensation as the court may award. Sect. 149.

(*a*) It is proper here to refer to 33 & 34 Vict. c. 78 (the Tramways Act, 1870), as it contains provisions whereby a local board may be enabled to construct and maintain a tramway within their district. Their consent is also necessary to enable other persons to obtain a provisional order under the Act, unless such consent is dispensed with by the Board of Trade. The Act also contains important provisions as to the right of a tramway company to interfere with roads, sewers, &c.; for the purchase of the undertaking by the local authority, &c.

See also the Gas and Waterworks Facilities Acts, 1870 and 1873 (in the Appendix), as to the necessity for the consent of the local authority for a provisional order under these Acts.

See also the provisions of the Acts relating to the use of locomotives on public roads, 24 & 25 Vict. c. 70; 28 & 29 Vict. c. 83 (continued by several statutes, and lastly by the Expiring Laws Continuance Act, 1882, 46 & 47 Vict. c. 40); and 41 & 42 Vict. c. 77, Part II.

(*b*) See the definition of *street* in section 4, *ante*, p. 9. See also the notes to section 144, *ante*, p. 137, and note (*a*) to the next section.

(*c*) Before 1836 any road which was dedicated to the public and used by them became a highway repairable by the inhabitants at large. *Reg.* v. *Westmark*, 2 M. & Rob. 305; and see per BLACKBURN, J., in *Reg.* v. *Dukinfield*, *infra*. In that year, however, the Highway Act, 1835, 5 & 6 Will. 4, c. 50, came into operation, and section 23 of that Act prescribes certain formalities which must be complied with before a landowner can dedicate a road so as to make it repairable by the public. But a road may be none the less a highway, because the public are not bound to repair it. This was held in *Roberts* v. *Hunt*, 15 Q. B. 17. A road which has been dedicated since 1836, but with respect to which the formalities prescribed by section 23 of the Highway Act, 1835, have not been complied with, is not within this section, and the owners of adjoining property may be compelled to pave, &c., it under section 150, *post*. As to the application of section 23 to a road in an urban district, see *Reg.* v. *Dukinfield*, *post*, p. 170.

The duty of repairing streets which are public highways is imposed on the urban authority by section 144, *ante*, p. 137. This Act contains no section like section 53 of the Towns Improvement Clauses Act, which empowers the authority, when that section is in force, to charge the cost of the repairs of a public highway upon the adjoining owners. That section, however, has been held only to apply when the highway has never previously been paved, &c. See *Reg.* v. *The Great Western Railway Co.*, 28 L. J. M. C. 246; 1 E. & E. 806; 5 Jur. (N.S.) 1054. As to the recovery of expenses under that section as incorporated by a local Act, see *Portsmouth* (*Mayor of*) v. *Smith*, 46 J. P. 23.

It has been held under 18 & 19 Vict. c. 120, s. 96, that a metropolitan vestry are bound to repair the pavement over vaults and cellars, although by section 102 of that Act the vaults, &c., and the openings into them are to be repaired by the owners of them. *Hamilton* v. *St. George's, Hanover Square* (*Vestry of*), L. R. 9 Q. B. 42; 43 L. J. M. C. 41; 29 L. T. (N.S.) 428; 22 W. R. 86; 38 J. P. 405.

As to the meaning of the words "repairable by the inhabitants at large," see the next section, note (*b*), *post*, p. 154.

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(*d*) The words *shall vest in* are future in signification, but as a similar provision was contained in previous Public Health Acts, the effect of the words in question is merely to continue the state of things which at the time of the passing of the Act existed in districts already constituted (see section 326, *post*). But while the property mentioned in the section passed to the local authority, it must be remembered that all outstanding liabilities also passed (see section 12, *ante*, p. 25.) The meaning of the words "vest in" will appear from the following cases:—

In *Hinde* v. *Chorlton*, L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* as used in a local Act, said "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey* v. *Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97, it was provided by an Act that certain lands should be *vested in* the commissioners of sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold passed to them." In *Bagshaw* v. *Buxton Local Board*, 1 Ch. D., at p. 222, JESSEL, M. R., said that by the term *vested* he meant vested *sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street. *Coverdale* v. *Charlton*, 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. (N.S.) 88; 26 W. R. 687; 43 J. P. 268. In that case by an award made under an Inclosure Act passed in 1766, two private roads, E. and H., were set out. About 1818 the road E. became a *public* highway. Down to 1863 the surveyors of highways for the parish of C., within which E. and H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a *private* way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case JAMES, L. J., explained this decision as to the meaning of the words *vest in* as follows:—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public." *Rolls* v. *St. George the Martyr, Southwark* (*Vestry of*), 14 Ch. D. 785; 49 L. J. Ch. 691; 43 L. T. (N.S.) 140; 28 W. R. 867; 44 J. P. 680. In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N.

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nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision of the Master of the Rolls, that under 18 & 19 Vict. c. 120, s. 96, all streets being for the time being highways are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted, the interest of the vestry determines. And it was therefore held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street had been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20, ss. 46—51), it was held that the vesting of the street in the vestry under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridges or its fences, but merely vested in them the carriageway and footpaths and the materials of which these were made. *Great Eastern Railway Company* v. *Hackney Board of Works*, *post*, p. 159.

(*e*) The keeping of the street in repair is imperative. It is doubtful whether the neglect to repair the highways is a default within section 299, *post*, but as by section 144, *ante*, the urban authority are the highway authority within their district, proceedings to compel repairs may be taken under the Highway Acts.

(*f*) The principle established by *Bolton* v. *Crowther*, 2 B. & C. 703, is, that where the public commissioners have conferred upon them by statute powers to effect works for the public good, they are not personally responsible for the damage which they cause to private individuals in the due and careful exercise of those powers. That case was decided with reference to the General Turnpike Act, 3 Geo. 4, c. 126, s. 83 of which authorized the trustees to divert, shorten, alter or improve, the course or path of any of the roads under their management, and to divert, &c., any roads through or over any private lands, tendering or making satisfaction to the owners thereof and persons interested therein for the damage sustained thereby. It was held that under this clause the trustees were authorized to lower hills and raise hollows, and that the trustees were not liable to an action for consequential injury resulting from their altering the level of a road opposite the entrance to certain premises. So where a local Act empowered a town council to alter the level of any street, it was held that they had not exceeded their powers by erecting a bridge in the line of a street over a canal. *Beaver* v. *The Mayor, &c., of Manchester*, 8 E. & B. 44; 4 Jur. (N.S.) 23; 26 L. J. Q. B. 311. In another case where an action was brought against a local board for lowering a highway and thereby obstructing the access to a house, the court held that the plaintiff had no right of action. *Bold* v. *Williams*, 21 J. P. 84. And see *Ferrar* v. *The Commissioners of Sewers*, L. R. 4 Ex. 227; 38 L. J. Ex. 102; 21 L. T. (N.S.) 295; 17 W. R. 709. Section 308 of this Act provides, however, for the payment of compensation for injuries sustained by persons in consequence of the exercise of the powers conferred by this Act. Therefore, where on the owner's default the board executed works under section 150, *post*, and in so doing altered the level of the street so as to make the access to one of the houses in the street difficult and dangerous, it was held that though the owner of the house was liable to pay his proportion of the expenses, he was nevertheless entitled to compensation under 11 & 12 Vict. c. 63, s. 144 (corresponding to section 308, *post*), for the special damage he had sustained in order that his neighbours and the district generally might be benefited. *Reg.* v. *Wallasey Local Board*, L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 17 W. R. 766; 21 L. T. (N.S.) 90; 33 J. P. 677; 10 B. & S. 428.

But the urban authority will not be permitted in every case to alter the level of a street so as to cause unnecessary damage. The R. local board in repairing and improving a road raised a footpath by the side of a road a few inches, the effect of which was to prevent water which fell upon the space between a warehouse of the plaintiff, in which needles were stored, and the road from drain-

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ing into the road. On bill filed by the plaintiff against the local board for an injunction, it was held that they had no right to make improvements in a way calculated to cause unnecessary damage to the plaintiff, that the evil complained of was one of easy remedy, and that the case was not one for pecuniary compensation; and a mandatory injunction was granted to prevent the board from allowing such water to remain dammed up to the injury of the plaintiff. *Milward* v. *Redditch Local Board*, 21 W. R. 429.

The footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees (see section 148, *ante*, p. 144), so as to raise the level of the footpath in front of the house of the plaintiff and cause him damage. It was held by BRETT and COTTON L. JJ., reversing the judgment of the Queen's Bench Division (BRAMWELL, L. J., dissenting), that a street which is also a turnpike road is not excluded by the definition (see section 4, *ante*, p. 9) from the operation of the section corresponding to that in the text in the Act of 1848 (11 & 12 Vict. c. 63, s. 68), and that the plaintiff was therefore entitled to receive compensation under section 144 of that Act. *Nutter* v. *Accrington Local Board*, 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802; 43 J. P. 635, affirmed in H. L. 43 L. T. (N.S.) 710. (And see also as to a turnpike road being a street, *Thomas* v. *Roberts*, cited in the notes to section 156, *post*, p. 174). In the *Accrington Case* just referred to the majority of the court did not enter into the consideration of whether the alteration which had been effected had been done in pursuance of this section. They assumed that it had. But in the judgment of the dissentient judge, BRAMWELL, L. J., it was pointed out that had the act complained of been done by the turnpike trustees, no action would have lain against them on the principle established in *Bolton* v. *Crowther* (*supra*). "And," he continued, "usually a person cannot raise or lower a road in front of another man's park gate, and so leave his park gate high up in the air, or below the level of the road; because any person having the right is not likely to interfere with the level of the road. But supposing that the owner of property adjoining a highway is not the owner of the soil in the highway, I do not think he has any right by the law of the land to have the road continued at a particular level. It may be a great inconvenience to him no doubt to have the road altered if he has built with reference to the level of the road; but it may be an inconvenience to the public not to have the road altered, and I do not know that he has any vested right in the road remaining at that level to the inconvenience of all mankind." In every case, therefore, where compensation is claimed it becomes material to consider whether the act causing the injury has been done pursuant to this section, or whether it is such an act as might be justified by the board under their general powers as surveyors of highways. In *Taylor* v. *The Meltham Local Board*, *ante*, p. 141, the court held that an act done by the board as surveyors of highways was done pursuant to the Public Health Act, which conferred on the board the power of surveyors of highways; and in *Kay* v. *Atherton Local Board*, *ante*, p. 142, the court expressed the same opinion. But see, on the other hand, *Burgess* v. *Northwich Local Board* and *Pearsall* v. *Brierley Hill Board*, *ante*, p. 141.

The 55th and 56th sections of a local Act for the improvement of a township enabled the commissioners executing the Act to pave in a sufficient manner, on default of the owners or occupiers for six months after notice requiring them to do so, "the public streets, ways, and passages within the said township which are now built upon, but not made, paved, flagged, cleansed, or otherwise put into good order and condition, and all such other streets, &c., which are now making or being built upon, or may hereafter be made, laid out, or built upon, or such thereof respectively as may require the same." The 56th section empowered the commissioners, after such street should have been completed as to paving, &c., and the owners should have paid the expenses, to declare them highways. The 53rd section empowered and required the commissioners to cause the present and future streets to be paved, &c., and the

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ground or soil thereof to be raised, lowered, or altered from time to time in such manner and with such materials as the commissioners should think fit. The 54th section enabled the commissioners to declare new streets to be highways, provided they were of certain width. The Act did not contain a clause giving compensation for damages occasioned by the exercise of the powers conferred by the 53rd section. It was held that the general powers conferred by the 53rd section were to be exercised for the repair only of pavements in old streets and streets declared to be highways under the Act; that they were inconsistent with the specific powers conferred by the 55th and 56th sections; and that the lowering of the ground or soil of the street described in sections 55 and 56 was an act of trespass not to be justified under the 53rd section. *Brown* v. *Clegg*, 16 Q. B. 681; 15 J. P. 609.

By section 15 of a local Act, the local board were directed to cause offensive ditches to be cleansed, covered, or filled up; and section 16 empowered them to cause the ditches at the sides of or across public roads to be filled up, and to substitute pipe and other drains, and from time to time to amend the same; and the surface of the land gained by filling up such ditches might, if the board thought fit, be thrown into the roads and ways, and be repairable as part thereof. The plaintiff was owner of a close adjoining a public highway, and between the close and the highway was a strip of land averaging 9 feet in width. Upon the strip of land ran a ditch, the bank of which, on the plaintiff's side, was 3 feet in width, and covered with grass, and the bank on the roadside was one foot in width, and covered with grass. At the side of the road were posts and rails above two feet high. The plaintiff and his predecessors had usually repaired the posts and rails, but on two or three occasions the surveyor of the highways and the local board had repaired them without the plaintiff's knowledge. The board having removed the posts and rails, and covered the ditch, it was held that they had no power to do so, the ditch not being at the side of a public road within section 16, and presumably belonging to the plaintiff as the owner of the adjoining land. *Tutil* v. *West Ham Local Board*, L. R. 8 C. P. 447; 28 L. T. (N.S.) 597; 37 J. P. 455.

A public body, with statutory power to stop up, alter, or use for the purpose of the authorized works, certain specified streets, were restrained by injunction from interfering, in excess of their powers, with the cellar of a house in one of the streets, the roadway in which was being lowered, until the amount of compensation for the whole house should have been ascertained and paid. An inquiry as to the damages sustained by the plaintiff's, the owner, and the occupier of the house, by reason of the works commenced by the defendants, having been directed by the decree, it was held that the plaintiff was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorized act of lowering the roadway, but only for direct structural injury occasioned by the unauthorized interference with his cellar. *Bigg* v. *The Coporation of London*, L. R. 15 Eq. 376; 28 L. T. (N.S.) 336; 37 J. P. 564.

(*g*) The owners of land adjoining a highway are not in general bound to fence them from the highway. Where a sewer belonging to the metropolitan commissioners adjoined a highway, it was held that they were not liable for an accident caused by its being unfenced. *Cornwell* v. *The Metropolitan Commissioners of Sewers*, 10 Ex. 771; 3 C. L. R. 417; 19 J. P. 313.

This clause is permissive. No compulsion or duty is cast upon the urban authority by these words. Therefore, where a goit ran by the side of an ancient public footpath, it was held that the local board were not bound to fence the path from the goit to prevent accidents. *Wilson* v. *Halifax (Mayor, &c., of)*, L. R. 3 Ex. 114; 37 L. J. Ex. 44; 16 W. R. 707; 17 L. T. (N.S.) 660; 32 J. P. 230.

(*h*) In general no person or company may take up or interfere with a highway so as to create a nuisance. See *Reg.* v. *Longton Gas Company*, 29 L. J. M. C. 118; 2 E. & E. 651; 6 Jur. (N.S.) 601; 8 W. R. 293; 24 J. P. 214. See also *Ellis* v. *Sheffield Gas Consumers' Company*, 2 E. & B. 767; 23 L. J.

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Q. B. 42; 22 L. T. (o.s.) 84; *Pudsey Coal Gas Company* v. *Bradford* (*Mayor of*), L. R. 15 Eq. 167; 42 L. J. Ch. 293; 28 L. T. (N.S.) 11; 21 W. R. 286; 37 J. P. 340; *Stockport Waterworks Company* v. *Corporation of Manchester*, 9 Jur. (N.S.) 266. It was there held that the taking up of the pavement and digging trenches in the roadway and footway of a public thoroughfare, in order to lay down service pipes for the supply of gas from mains to private houses, are not acts which can be justified at common law as done in the exercise of the right of every occupier of a house to make such a temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property; and a householder who authorizes such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. Nor is the consent of the local authority under this section an answer to an indictment, for the power to consent is limited to works authorized by the Act. *Hawkins* v. *Robinson*, 37 J. P. 662.

But in *The Edgware Highway Board* v. *Harrow District Gas Company*, L. R. 10 Q. B. 92; 44 L. J. Q. B. 1; 31 L. T. (N.S.) 402; 23 W. R. 90, the plaintiffs, a highway board, agreed with the defendants, a gas company, that if the plaintiffs would give the defendants a license to open a highway in their jurisdiction, the defendants should make good the surface of the road, and pay to the plaintiffs 1*s.* per yard of the highway so broken up. It was held that the contract was valid, for that the agreement of the plaintiffs to allow the defendants to interfere with the surface of the road was a good consideration, and the contract was not illegal, as it did not necessarily contemplate the creation of a nuisance by the defendants.

The Court of Chancery refused, however, to interfere by injunction where the injury done by the opening of the streets was temporary and trivial. *The Attorney-General* v. *Sheffield Gas Consumers' Company*, 3 D. M. & G. 304; 22 L. J. Ch. 811; 17 Jur. 677; *Attorney-General* v. *Cambridge Consumers' Gas Company*, L. R. 4 Ch. 71; 38 L. J. Ch. 94, 107; 17 W. R. 145; 19 L. T. (N.S.) 508; 33 J. P. 147.

Where a company has a special Act, passed before this Act, the provisions in the text will not affect their powers. In *The London and Blackwall Railway Company* v. *Limehouse District Board of Works*, 3 K. & J. 123; 26 L. J. Ch. 164; 28 L. T. (o.s.) 140; 20 J. P. 789, this general principle was laid down. When the legislature has vested special powers in a particular body for certain specified purposes, a general Act will not override those special powers; thus a railway company were held to be empowered to build a station which abutted on a street in the metropolis, without the consent of the district board, their local Act, which preceded the Metropolitan Local Management Act, empowering them to do so. See also to the like effect *Goldson* v. *Buck*, 15 East, 372, and *The Attorney-General* v. *The Northern and Eastern Railway Company*, 10 M. & W. 263; 12 L. J. Ex. 106. For an instance of power under a special Act to break up pavements to lay gas pipes, see *Dover Gas Light Company* v. *Mayor, &c., of Dover*, 1 Jur. (N.S.) 812.

As to the right of a private individual to restrain the laying of pipes in a highway, the soil of which belongs to him, see *Goodson* v. *Richardson*, L. R. 9 Ch. 221; 43 L. J. Ch. 790; 30 L. T. (N.S.) 142; 22 W. R. 337; 38 J. P. 436. The urban authority have probably the same rights in respect of streets vested in them under this section.

See sections 153, 331, *post*, as to certain Acts of interference with pipes, &c., authorized by this Act.

(*i*) As to the recovery of this penalty, see section 251, *post*.

Power to compel paving, &c., of private streets.

150. Where any *street* (*a*) within any urban district (not being a highway repairable by the inhabitants at large) (*b*) or the carriageway footway or any other part of such street (*c*) is not sewered levelled paved metalled flagged channelled and made good or is not

lighted (*d*) to the satisfaction of the urban authority, such autho- Sect. 150.
rity may, by *notice* addressed to the respective *owners or occupiers* (*e*) of the premises fronting adjoining or abutting (*f*) on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting the same within a time to be specified in such notice. 159 post

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice (*g*).

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein (*h*); and may recover *in a summary manner* (*i*) the expenses incurred by them in so doing from the *owners in default* (*k*), according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority (*l*), or (in case of dispute) by *arbitration* in manner provided by this Act (*m*); or the urban authority may by order declare the expenses so incurred to be private improvement expenses (*n*).

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large (*o*).

(*a*) See the definition of *street* in section 4, *ante*, p. 9. The question whether any place is, in fact, a street is one for the justices to consider when they are asked to enforce payment of the expense under the present section. In a recent case the magistrates found, as a fact, that the road which had been paved was not a street in the ordinary sense, though it was within the definition in section 4. The court held that they were not bound by section 4 to find

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that the road was a street. The definition in section 4 merely provided that the term street should *include* certain places. It merely meant that if a certain place, way, or road were a street in other respects, then the term should include such place, way, or road. *Maude* v. *Baildon Local Board*, 10 Q. B. D. 394; 48 L. T. (N.S.) 874. This case was difficult to reconcile with the earlier decisions, and it was questioned by the Court of Appeal in *Portsmouth* (*Corporation of*), v. *Smith*, 13 Q. B. D. 184; 53 L. J. Q. B. 92; 50 L. T. (N.S.) 308; 48 J. P. 404. It may be said, therefore, that while it is a question of fact whether a road is a street within this section, it need not be a street in the ordinary sense if it is a street as defined by section 4.

In the note on section 4, *ante*, p. 10, it has been noticed that a highway which was not a street in the ordinary sense might become a street by having houses built continuously on each side of it. *Pound* v. *The Plumstead Board of Works*, L. R. 7. Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461; 20 W. R. 177; 36 J. P. 468. A road in P., within the metropolis, ran, in 1855, between an irregular line of houses and market gardens upon the south side, and market gardens upon the north. Between that year and 1874 a continuous line of houses was built along the north side, and several houses lay along the south. It was held that between the two dates the road, though a public highway, had become a new street. *Dryden* v. *Putney* (*Overseers of*), 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40 J. P. 263. And see *Robinson* v. *The Barton Local Board*, 21 Ch. D. 621; 52 L. J. Ch. 5; 47 L. T. (N.S.) 286; 46 J. P. 662; S. C., in House of Lords, 8 App. Cas. 798.

The power given by this section only attaches where the particular street requires to be levelled, &c., looking at it as an isolated street. Where, therefore, the local board had required the owner of a house to level the part of a street upon which his house fronted, so as to make it on a level with other streets, it was held that they could not recover from him the expenses incurred by them in doing the work. *Carey* or *Caley* v. *Kingston-upon-Hull Local Board*, 34 L. J. M. C. 7; 5 B. & S. 815; 11 Jur. (N.S.) 171; 13 W. R. 143; 11 L. T. (N.S.) 339; 29 J. P. 116.

Where an owner had, with the sanction of the Metropolitan Board of Works, under 25 & 26 Vict. c. 102, s. 44, laid down a sewer in a new street, and the district board afterwards took up this sewer and laid down another for the drainage of the neighbourhood, it was held that the owner could not be charged with any portion of the expense of the second sewer. *Fulham District Board of Works* v. *Godwin*, 1 Ex. D. 400; 35 L. T. (N.S.) 907; 41 J. P. 134. This principle would apply to a sewer laid in a street under this section, for, as already stated, the street must be regarded as isolated, and the sufficiency of the sewer must be determined with respect to the street itself, and not to the requirements of the neighbourhood.

A railway company built a bridge over their railway in the metropolis, with additions, on which their station was erected, and they lighted the bridge with street lamps, and allowed the public for 18 months to use the bridge as a highway. They had made an agreement with a water company to allow water pipes to be carried over the bridge; and they now sought to close the passage of the public, so as to prevent the bridge being dealt with as a street. It was held that the bridge had become by dedication a street, and that the railway company as owners were liable to pay paving expenses. *North London Railway Company* v. *St. Mary, Islington* (*Vestry of*), 27 L. T. (N.S.) 672; 21 W. R. 226; 37 J. P. 341.

Unless a street is declared to be a highway under section 152, *post*, the provisions of this section may be put in force as often as occasion requires. It is otherwise in the metropolis, where, when a new street is paved at the expense of the owners, the vestry or district board is bound afterwards to keep it in repair whether it has become a highway or not. *Reg.* v. *Hackney District Board of Works*, L. R. 8 Q. B. 528; 42 L. J. M. C. 151.

A street may be a highway by dedication to and adoption by the public. In *Thomas* v. *Williams*, 24 J. P. 821, the facts were as follows:—A street belong-

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ing to B. was laid out for buildings, and a street formed in 1836, which had ever since been used as a public thoroughfare. B. had never formally dedicated it to the public, and, in 1848, he granted a license to W. to lay down gas pipes, for which, and for preventing others from interfering, B. had received from W. a small annual rent. Since 1853 the local board had repaired the street, and in 1858 they put up notices under 11 & 12 Vict. c. 63, s. 70 (corresponding to section 152, *post*), to make it a highway. W. having been summoned for wilfully injuring the street, being a highway, it was held that there was ample evidence from which the justices might infer that the street had been dedicated to the public by B., and was now a highway.

A new street in the town of Bradford had been repaired by the owners in 1828, and the public had ever since been allowed freely to pass through it, and great numbers had used it. There had been no express dedication or certificate of justices rendering the township liable to repair, and it had never in fact been repaired by any one since the above date, and it did not need repair. The local board having called upon the adjacent owners to pave, sewer and level it, and on their refusal having done so themselves and obtained an order of the justices on the owner to pay the expenses, it was held that there was ample evidence that this was a highway dedicated to and adopted by the public, and the order was accordingly quashed. *Illingworth* v. *Montgomery*, 24 J. P. 101.

In 1825, by a local Act improving the town of L., commissioners were appointed who were authorized to repair all streets and highways in the town; and it was enacted that when any new streets should be laid out and put in good order to the satisfaction of the commissioners, then on the application of the owners of the soil the commissioners might declare such streets to be public highways, and were thereafter to repair such street like the other streets in the town. In 1830 a new street was laid out and dedicated to the public, who thereafter used it as a public highway, but it was never declared to be such by the commissioners. In 1852, 11 & 12 Vict. c. 63, was applied to the town, and the owners of land adjacent to the new street were required to pave it under section 69 (corresponding to section 150 of this Act). It was held that this was lawful, inasmuch as the street was not a highway repairable by the inhabitants at large, the local Act having prevented its becoming a highway unless so declared by the commissioners, for the liability of the inhabitants was taken away by a provision contained in the Act giving power to the commissioners to make rates, and exonerating every person assessed from the performance of statute duty for the repair of the public highways within the town. (It might have been otherwise had the liability of the inhabitants remained as in *Reg.* v. *St. George, Hanover Square*, 3 Camp. 222.) *Wallington* v. *White*, 30 L. J. M. C. 209; 10 C. B. (N.S.) 128; 25 J. P. 358. This decision was affirmed by the Exchequer Chamber, *sub nom*, *Willes* v. *Wallington*, 32 L. J. C. P. 86; 13 C. B. (N.S.) 865; 27 J. P. 295. This case was afterwards cited and distinguished in *Hirst* v. *Hallifax Local Board*, L. R. 6 Q. B. 181; 40 L. J. M. C. 43; 25 L. T. (N.S.) 28; 19 W. R. 279; 35 J. P. 261. In that case, by a local Act of 1798, trustees were authorized to pave streets in the township of H. and levy rates on the inhabitants, and all who paid these rates were to be exempt from all other charges for paving. In 1816 A. laid out a street, which he dedicated to the public, and in 1819 it had been used by the public. In 1823 another local Act passed which repealed that of 1798. It appointed trustees who were to have all the rights, duties and obligations of highway surveyors, and exonerated the inhabitants from liability to repair the highways. In 1851 the Public Health Act was applied to the township of H., and on paving the street the board charged the expenses on the adjoining owners. It was held that the street was a highway repairable by the inhabitants at large, for there was nothing in the first local Act which prevented the street becoming a highway by dedication and user, and that the second local Act applied only to streets then in progress or afterwards laid out, and had no effect on streets already

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public. "Had the second Act been passed before the street became a highway the case would have been exactly analogous to *Wallington* v. *White*" (*sup.*) Per LUSH, J.

An owner of land in the suburb of a town who allows the public to pass over his land, but who does not make a road at his own expense, nor propose to dedicate a highway to the public by notice under 5 & 6 Will. 4, c. 50, s. 23, nor undertake to keep the road in repair for 12 months with the view of throwing the future care and expense of the highway on the surveyor, and the general Act under the same section, is not liable to be compelled to pave and sewer the road under the provisions contained in the text. *Healey* v. *Batley* (*Corporation of*), L. R. 19 Eq. 375; 44 L. J. Ch. 642. In that case the owner of land near a town had in January, 1850, demised the coals under it for six years to K., the owner of the adjoining land. In the lease was an agreement that a street, to be called *Union Street*, should within five years be made across the land under which the coal lay and K.'s land; that a sewer should be made under such road; that the lessor and lessee should, at their own cost, construct and repair so much of the said road and sewer as should extend along their respective lands; and that the road should be used as a public road for all purposes for ever thereafter, and should be maintained by each of the parties so far as the same should extend over his land until the same should be adopted by the surveyor of highways. The road and sewer were never made and there was no dedication of a highway to the public by notice under the Highway Act. A brickfield, and afterwards a colliery, were opened on K.'s land, and gaps were opened through which access was obtained to the premises for carts and foot passengers. In 1869 posts and chains were placed across one of the openings, but after a few months the chains were removed. In 1870 K.'s land was sold, and in 1871 conveyed to the plaintiff in fee, and in 1872 the local board called upon him to pave and sewer the alleged street. It was held that the agreement in the expired lease had been abandoned, and could not be enforced, and that it did not amount to a dedication of a right of way to the public. In this case it will be seen that there never was anything which could be called a street. In another case H., who was lessee of land under a lease dated 1855, in 1865 laid out a proposed road across part of his land, and built six houses on one side of the road. In 1870 she abandoned her intention of making the road, and in 1874 she demised the remainder of the land, including the site of the abandoned road. In 1880 the urban authority called upon the representatives of H. to pave the road, and on their neglecting to do so entered on the land and began the work. It was held that the laying out of the proposed road was no dedication of a public right of way, and that an injunction must go against the urban authority. *Hall* v. *Bootle* (*Corporation of*), 29 W. R. 862; 44 L. T. (N.S.) 873. And see *Rolls* v. *St. Mary, Newington* (*Vestry of*), W. N. 1873, p. 168.

S. and other owners of land laid out plots for building, with roads, and engaged a contractor to make the roads to the satisfaction of the local board of C. The surveyor of the local board did in fact approve of the roads, but did not report the matter to the board, and no formal approval by the board was ever given, but the board having a burial ground situated near, did in fact keep part of the roads for some time in repair, including the part adjacent to S.'s frontage. Afterwards the board called on S. and other owners to sewer the road, and on S. failing to do so, did the work and sought to recover the expenses. It was held that as the board had never indicated their satisfaction with the paving, &c., the board was not estopped from recovering the expenses. *Smith* v. *Croydon Local Board*, 32 J. P. 709.

By a local improvement Act of 1838 all streets, ways and places fully built upon, not being highways, were to be paved, and all such streets, ways or places as were then making, and might be thereafter made, though not fully built upon, were to be paved, and the expenses to be paid by the frontagers. S. occupied a house in a street formed about 1853, and since used by the public. It was held that he was liable to pay the expenses of paving. *Birkenhead Improvement Commissioners* v. *Sansom*, 40 J. P. 406.

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D. was the owner of a house, the back premises of which had a door leading into an alley or lane which had been used for about 50 years in common by the tenants of nine houses as an access, but there was no thoroughfare through it. It was held that there was evidence justifying the magistrate in finding that this was a new street within the meaning of the Metropolis Management Acts (18 & 19 Vict. c. 102, s. 105, and 25 & 26 Vict. c. 102, s. 77) so as to make the owners of the houses abutting on it liable for the expenses of paving it. *Dodd* v. *St. Pancras* (*Vestry of*), 34 J. P. 517.

(*b*) The words "repairable by the inhabitants at large" were not in the corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 69), but were added by 15 & 16 Vict. c. 42, s. 13. The difficulty which arose in *Sunderland* v. *Herring*, 17 J. P. 741, is thus obviated. See also *The Mayor of Stockport* v. *Cheetham*, 24 J. P. 196, where the word street in a local Act was held to extend only to highways repairable by the public.

The words "repairable by the inhabitants at large" are used in contradistinction to "repairable by individuals *ratione tenuræ*." On demurrer to a declaration alleging that it was the duty of a local board to repair a public footpath, it must be taken that such footpath was a highway repairable by the inhabitants at large. (*Gibson* v. *Preston* (*Mayor, &c., of*), *ante*, p. 138. This section applies to all present and future streets, except when they are repairable by the inhabitants at large, and whether they have been dedicated to the public or not. Per QUAIN, J., in *St. Mary, Islington* (*Vestry of*), v. *Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85; 30 L. T. (N.S.) 11; 22 W. R. 402; 38 J. P. 198; following *Kingston-upon-Hull* v. *Jones*, 1 H. & N. 489; 26 L. J. Ex. 33. In a later case, JESSEL, M. R., said that the word streets as here used "clearly extends to places which are in all respects private, and over which the public have no right." And he added, "What is the Act for? It is a public health Act. The owners of these private courts and alleys are, of all the people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the legislature intended to except such places from the operation of the Act. I should say, if the Act were passed for anybody, it must have been to include those owners who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys over which the public have no street rights whatever, but which are intended to be used for the dwellings of the poor and are unprovided with what, according to modern science, is known to be absolutely necessary for their well being." *Taylor* v. *Oldham* (*Corporation of*), 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 178.

An application to justices by a local board for the recovery of expenses from an owner was dismissed on the ground that the street was a highway repairable by the inhabitants at large. The local board some years afterwards made an application against the same person for the recovery of a proportion of paving expenses subsequently incurred in respect of the same street, and a stipendiary magistrate made an order for payment. It was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the adjudication of the justices that the street was a highway repairable by the inhabitants at large on the first application was beyond the jurisdiction of such justices, who had only power to make or refuse an order for the payment of the expenses claimed, and that therefore such adjudication did not estop the local board from claiming the expenses they claimed on the second application, and consequently that the magistrate might make the order which he made for their payment. *Reg.* v. *Hutchins*, 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. (N.S.) 364; 29 W. R. 724; 45 J. P. 504.

(*c*) It was held with reference to the Metropolis Management Acts (18 & 19

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Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77) that although the district board might have resolved that part only of a road should be repaired, yet as they had resolved that the whole should be repaired, there could be only one apportionment on all the owners along the entire road. Therefore when the surveyor had divided the road into four sections, and apportioned the cost of repairing each section amongst the owners of property in each section respectively, it was held that such apportionments were bad, and could not be enforced. *Whitchurch* v. *Fulham Board of Works*, L. R. 1 Q. B. 233; 12 Jur. (N.S.) 353; 35 L. J. M. C. 145; 14 W. R. 277; 13 L. T. (N.S.) 631; 30 J. P. 229.

(*d*) This requisition as to lighting is new. See in section 161, *post*, the provisions as to lighting streets.

(*e*) Note that the notice may be given to the owner *or* occupier, but that the owners only are responsible for the expenses if recovered summarily. Unless notice has been given to the owner *or* occupier to do the work, the expenses cannot be recovered from the former. *Jarrow Local Board* v. *Kennedy*, L. R. 6 Q. B. 128; 19 W. R. 275; 35 J. P. 248.

See the definition of owner in section 4, *ante*, p. 6. As to the authentication and service of the notice, see sections, 266, 267, *post*.

The service of the notice on a person who is *de facto* in receipt of the rent, is a service on the owner sufficient to satisfy the requirements of this section. *Peek* v. *Waterloo and Seaforth Local Board*, 33 L. J. M. C. 11; 9 Jur. (N.S.) 1344; 2 H. & C. 709; 12 W. R. 252; 9 L. T. (N.S.) 338; 27 J. P. 807. Section 267, *post*, which contains provisions as to service of notices, was intended to provide in aid of those who have to serve notices, and was not meant to prevent a notice, otherwise perfectly good, from being good. Therefore it was held that service at the owner's place of business by delivering and reading it to his clerk, was a good service. *Mason* v. *Bibby*, 33 L. J. M. C. 105; 2 H. & C. 881; 10 Jur. (N.S.) 519; 12 W. R. 382; 9 L. T. (N.S.) 692; 28 J. P. 121.

As some difficulty had occurred in framing the notice under 11 & 12 Vict. c. 63, s. 69, so as to be effectual (see *Parkinson* v. *Mayor of Blackburn*, 33 L. T. (O.S.) 119; 28 L. J. M. C. 7; *Bayley* v. *Wilkinson*, 33 L. J. M. C. 161; 16 C. B. (N.S.) 161; 12 W. R. 797; 10 L. T. (N.S.) 543), 24 & 25 Vict. c. 61, s. 17, enacted that the form of notice in Schedule A. to that Act annexed or to the like effect might be used. The form of notice under this Act will be found in Schedule IV., Form G., *post*, although no reference is made to it in the text. Where a local board added to the form words to the effect that if the owner did not do the work they would do it, and declare the expenses to be private improvement expenses, it was held by STEPHEN, J., that the notice was bad, not being an absolute notice to do the work as the section requires. *Gould* v. *Bacup Local Board*, *post*, p. 168.

A notice which is *ultra vires* as to part, but good as to the residue, can be enforced in respect of that which is valid. Thus a notice to flag a street fronting premises, referring to a place which included a garden not dedicated to the public, was held to be valid so far as it applied to the street, and enforceable accordingly. *Hall* v. *Potter*, 39 L. J. M. C. 1; 21 L. T. (N.S.) 454; 34 J. P. 515.

Notice was given to the appellant and five others, requiring them to sewer, pave, &c., the parts of the street in front of their premises within a specified time. Five of the owners executed the works, but the appellant made default. The board thereupon did the work, and the surveyor having made an apportionment gave her notice accordingly. It was held that the respondents were not bound before executing the work to give the appellant a fresh notice specifying the particular works remaining to be done by her. *Simcox* v. *Handsworth Local Board*, 8 Q. B. D. 39; 51 L. J. Q. B. 168; 30 W. R. 273; 46 J. P. 260.

No provision is made in this Act for the owners to object to the notice such as that in 26 & 27 Vict. c. 70, s. 10. As to the effect of default in

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making objection under that section, see *Reg.* v. *Livesey*, 22 L. T. (N.S.) 470; 34 J. P. 645. In a case where a local board had duly proceeded under the Act, and had sewered, &c., a new street, and no notice had been given by an owner that he disputed the apportionment, it was held that it was still open to the owner to dispute his liability, and to show that the street was a highway repairable by the inhabitants at large. *Hesketh* v. *Atherton Local Board*, L. R. 9 Q. B. 4; 43 L. J. M. C. 37; 29 L. T. (N.S.) 530; 38 J. P. 149; and in *Ex parte Wake, Reg.* v. *Recorder of Sheffield*, 11 Q. B. D. 291; 53 L. J. M. C. 1; 32 W. R. 82; 47 J. P. 504.

(*f*) See the definition of *premises* in section 4, *ante*, p. 6. The term includes *land*. A railway in a metropolitan district was carried across a new street by an arch. On one side of the street the railway was carried forward on arches, and on that side was a strip of land, ten feet wide, left open for the purpose of repairing the arches; this abutted for ten feet on the street. On the other side the railway was carried forward on an embankment, and the sloping part of the embankment abutted on the street about thirty feet, and at the foot of the embankment was an open space also about thirty feet wide, also abutting on the street, and left for the purpose of allowing of slips on the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land* abutting on the street. *Higgins* v. *Harding*, L. R. 8 Q. B. 7; 42 L. J. M. C. 31; 27 L. T. (N.S.) 483; 21 W. R. 191; 37 J. P. 677. This case may be usefully compared with *The London and Brighton and South Coast Railway Company* v. *St. Giles, Camberwell*, 4 Ex. D. 239; 48 L. J. M. C. 186; 41 L. T. (N.S.) 162. In that case a line of railway was situate in a deep cutting at a place where a road passed over the line. The road was carried over on a bridge from one boundary of the line to the other, but supported on stone piers erected on the slope of the cutting. It was held that neither the railway under the bridge nor the sloping sides of the cutting could be said to abut on the road. Where a railway ran in a cutting and adjoined a new street which the vestry were about to pave, and was separated from it by a wall, through which there was no communication between the street and the railway, it was held that the railway *bounded* or abutted on the street within the meaning of 25 & 26 Vict. c. 122, s. 77. *London and North Western Railway Company* v. *St. Pancras (Vestry of)*, 17 L. T. (N.S.) 654. All these cases as to railway cuttings were discussed and approved of in a recent case before the House of Lords. There a railway company carried a road over a deep cutting by means of a bridge. The road having been paved by the board of works for the district, and so constituted a new street, the railway company were required to contribute to the cost of paving, &c. It was held that neither the parapets of the bridge nor the adjacent soil in the cutting were lands "bounding or abutting on the new street." *Great Eastern Railway Company* v. *Hackney District Board of Works*, 31 W. R. 769; 8 App. Cas. 687; 52 L. J. M. C. 105; 49 L. T. (N.S.) 509; reversing 9 Q. B. D. 412; 51 L. J. M. C. 57; 46 L. T. (N.S.) 679; 30 W. R. 765; 46 J. P. 532. See Addenda, p. VI.

A local Act empowered commissioners to pave streets and to recover the expenses by rates from the occupiers of houses, &c., "situated or being within any of the streets" in the district. It was held that houses and buildings in a yard communicating with a street by a covered gateway, which houses and buildings abutted on houses in the street, were situated *within the street* so as to be liable to the rates. *Baddeley* v. *Gingell*, 1 Ex. 319; 11 J. P. 838. This decision was followed in *The School Board for London* v. *St. Mary, Islington (Vestry of)*, 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. (N.S.) 504; 24 W. R. 137; 40 J. P. 310. In that case the London School Board were assessed in respect of a school house which did not immediately front the street, but stood back from it some 70 or 80 feet in a large yard, the whole area being about 29,500 square feet. There was a row of eleven small houses with gardens at the back of them between the area and this street; but the only access

See Lightbound v. H.B.L.B.d, 16 Q.B.D. 577.

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to the school was by a private passage which ran along one side of the last house and garden into the school yard, with gates opening from the street in question, the width of the passage being 20 feet and the length about 64 feet. It was held that the school-house, though not actually one of the houses forming the street, yet practically formed part of it, so as to render the board liable as owners for the paving expenses. The court held it was the benefit of access to the street which was the foundation to the liability. But an opinion was expressed that this principle would not apply to the case of an old established court, the access of which was common to the public and open to every one who liked to go in. And it is not necessary, apparently, that there should be actual access, if there is a possibility of access. It is well established that the owner of land adjoining a highway or street has the right of access to it at any point where it adjoins his premises. See *St. Mary, Newington (Vestry of)*, v. *Jacobs*, L. R. 7 Q. B. 47; 41 L. J. M. C. 72; 25 L. T. (N.S.) 800; 20 W. R. 249; 36 J. P. 119; *Marshall* v. *Ulleswater Company*, L. R. 7 Q. B. at p. 172; 41 L. J. Q. B. 41; 25 L. T. (N.S.) 793; 20 W. R. 144; 36 J. P. 583. This principle will explain many of the cases where there was no direct access to the street. Thus in one case the court held that the expenses must be apportioned among all the owners of premises fronting, adjoining or abutting on the street in proportion to the frontage, without any reference to direct or consequential benefit, which the Act assumes must be taken as proportioned to the frontage. Therefore a railway and canal company whose premises lay along one side of a street were held liable to pay their proportion of the expenses although they had no immediate access to the street. *Reg.* v. *Newport Local Board*, 32 L. J. M. C. 97; 3 B. & S. 341; 9 Jur. (N.S.) 746; 11 W. R. 263; S. C., *Powell* v. *Newport Local Board*, 27 J. P. 389. Again, the owner of ground at the end of a street forming a *cul-de-sac*, was held liable to pay the expenses of paving, &c., under a local Act, notwithstanding that a wall divided his property from the street, which wall, however, he might at any time have removed wholly or partially so as to obtain access to the street. *Manchester (Mayor, &c., of)* v. *Chapman*, 18 L. T. (N.S.) 640; 16 W. R. 974; 37 L. J. M. C. 173; 32 J. P. 582. And see *Sheffield* v. *Fulham District Board of Works*, 1 Ex. D. 395. In another case premises fronting W. street were divided from D. street by a small stream, but by two bridges over the stream were connected with it. By means of gates all communication with the street could be closed. One of the bridges had been moved and reinstated by the owners of the premises. It was held that the premises fronted, adjoined or abutted on D. street. *Wakefield Local Board* v. *Lee*, 1 Ex. D. 336; 35 L. T. (N.S.) 481; 41 J. P. 54.

B. was the owner of a house which had its front and only entrance in F. street, and behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, of which the dead wall at the end of B.'s garden was part of the line of street. It was held that B.'s land abutted on this new street. *Paddington (Vestry of)* v. *Bramwell*, 44 J. P. 815.

A. was the owner of three houses fronting a street called York Place, and adjoining or abutting at the rear upon a footpath at the end of a street called St. Julian Street, which formed a *cul-de-sac*. The ground at the back of these houses was five feet above the level of St. Julian Street, and the wall, which was the property of A., was about 12 feet high on the outside. There was no access from A.'s premises to St. Julian Street. It was held that his premises adjoined or abutted on St. Julian Street within this section. *Newport Sanitary Authority* v. *Graham*, 9 Q. B. D. 183; 47 L. T. (N.S.) 98; 31 W. R. 121; 47 J. P. 133.

The soil of private roads leading out of a new street was held to be "land bounding or abutting on such street," in *Lord Northbrook* v. *The Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. (N.S.) 461; 20 W. R. 177; 36 J. P. 468. But in this case Lord Northbrook had determinately reserved the property in the private roads to himself. He had not dedicated them to the public, and nothing that he had done was past recall.

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Therefore, in a subsequent case, this decision was distinguished. There the defendants, a land company, being owners of certain lands in 1863, laid them out for building purposes and made roads and ways across them, and nearly the whole of the estate was sold in lots to different purchasers. Each lot had a frontage upon one of the roads. The roads had been dedicated to the public, as far as any act of the defendants could do so, but no proceedings were taken to make them repairable by the parish. The plaintiffs, the board of works for the district, from time to time paved the new streets formed by the houses on the estate, and apportioned the cost among the owners of houses forming the streets and the owners of land bounding and abutting on the street. In so doing they assessed the defendants in respect of the new streets or roads when these bounded or abutted on the sides or ends of the streets paved, as being lands abutting on those streets within 25 & 26 Vict. c. 102, s. 77. It was held by the Exchequer Chamber, that, assuming the property in the soil of the roads to be in the defendants, they were improperly charged, for that they were not in respect of roads which had been irrevocably dedicated to the public the owners of land within the meaning of the section. *Plumstead Board of Works* v. *British Land Company*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; 32 L. T. (N.S.) 94; 23 W. R. 634; 39 J. P. 376; reversing L. R. 10 Q. B. 16; 31 L. T. (N.S.) 752; 23 W. R. 133; 39 J. P. 133. It must be observed, however, that 25 & 26 Vict. c. 102, s. 77, makes the owners of houses and land in the street liable not only for the work done to the street proper, but for the paving, &c., of the intersections of the streets. This provision is not contained in the text, and it remains to be decided whether in an urban district the owners of the soil of a public street abutting on a street within this section can be charged with a proportion of the expenses of paving, &c., the latter.

(*g*) The deposit of these plans is not a condition precedent to the recovery of the expenses from the owners. *Cooke* v. *Ipswich Local Board*, *infra*. In *Shanklin Local Board* v. *Millar*, *infra*, the county court judge held that payment under this section could not be enforced, on the ground that the opportunities afforded to the defendant of inspecting the documents deposited were not reasonable, the bye-laws of the local board having provided that the office of the board should be open only on Mondays and Thursdays from 10 till 3. The High Court reversed this decision on the ground that the provision as to deposit of plans was directory only and was not a condition precedent to the recovery of the expenses.

(*h*) Owners having made default, the local board of M. made a contract with W. to do the work for them, the work to be done within four calendar months after the signing of the contract, and the contractor to be paid for the work when the money was collected from the owners of the adjoining property. The local board had unintentionally given bad notices, and were therefore unable to collect the money from the owners. W., having done the work contracted for, brought an action against the local board for the amount due to him by the contract. It was held that he was entitled to recover, as an undertaking must be implied on the part of the local board that they were in position to collect the money from the owners and pay it over to him. *Worthington* v. *Sudlow*, 31 L. J. Q. B. 131; 2 B. & S. 508; 8 Jur. (N.S.) 668; 10 W. R. 621; 6 L. T. (N.S.) 283; 26 J. P. 453. In another case the plaintiff had in 1858 entered into contracts with a local board for the execution of works under this section, to be paid for out of money to be collected from those on whom the works were chargeable under the Act. The contracts were duly performed by the plaintiff. The notices given by the board turned out to be bad, and many of those who would otherwise have been liable refused to pay the sums assessed upon them. This became known to the plaintiff in 1860 and he then demanded payment. The board were in hopes of being able to collect the money notwithstanding the invalid notices, and by November, 1860, £800 was collected and paid over to the plaintiff, leaving a balance due of more than £3,000. The plaintiff commenced an action for this sum and obtained judgment, and within six months afterwards he commenced an action claiming a

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writ of *mandamus* commanding the board to levy a rate to satisfy the judgment. It was held that the delay in commencing the original action was excused and shown not to be undue, and that a peremptory writ might be granted. *Worthington* v. *Hulton*, L. R. 1 Q. B. 63; 6 B. & S. 943; 12 Jur. (N.S.) 73; 35 L. J. Q. B. 61; 14 W. R. 632; S. C., *Worthington* v. *Sudlow*, 30 J. P. 22.

Before entering into a contract for the execution of work for the local authority under this section, it is not necessary to obtain an estimate from the surveyor as to future repairs under section 174, sub-section (3), *post*; nor is such report a condition precedent to the right to recover the amounts apportioned on the several owners. *Cunningham* v. *Wolverhampton Local Board*, 26 L. J. M. C. 33; 7 E. & B. 107; 3 Jur. (N.S.) 385; 21 J. P. 262.

As to the power of a local authority to agree with one or more owners to execute the works without observing the formalities required by the section, see *Hall* v. *Batley* (*Corporation of*), *ante*, p. 41. That case was decided with reference to section 23, but the principle laid down in it appears to be equally applicable to this section. In that case LUSH, J., said: "It is not permitted to them (the local authority), arbitrarily to interfere and do the work at the owner's expense without first giving him the opportunity of doing it himself. But if they were to do so he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and surely the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." And section 257, *post*, evidently contemplates that there are works which may be done by agreement with the owner, so as to be recoverable from him and to be a charge on the premises as therein provided. In *Lewis* v. *Cardiff Urban Sanitary Authority*, 47 L. J. M. C. 101, an owner having received notice to pave, &c., indorsed on the notice an authority to the local board to execute the works, and an undertaking to pay the costs on completion. On default of payment after demand made, the board proceeded to recover the expenses in a summary manner. On a case stated it was held that the owner having by the submission indorsed on the notice admitted the right of the sanitary authority to issue such notice, he could not require proof before the justices of the fulfilment of the conditions precedent to the existence of such right. It was held, however, that the owner could not by such submission give jurisdiction to the sanitary authority if in fact they had none, but that he did thereby waive the proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to dispute it. It was therefore open to him to show that the street was not a highway repairable by the inhabitants at large.

It must be noticed that the urban authority have a discretion as to whether they will execute the works or not.

(*i*) See section 251, *post*. It is to be observed that where a statute provides a method of recovering such expenses, an action will not lie, the remedy given by the statute being exclusive. *Vestry of St. Pancras* v. *Batterbury*, 26 L. J. C. P. 243; 2 C. B. (N.S.) 477; 3 Jur. (N.S.) 1106; 21 J. P. 424. By a special Act incorporating the Railways Clauses Act, 1845, and the Towns Improvement Clauses Act, 1847, it was enacted that certain expenses incurred by the commissioners in paving streets, &c., might be recovered as damages. An action having been brought to recover expenses so incurred, it was held that such action was not maintainable, for that the proper construction of the several Acts was, that the expenses were to be recovered as damages on a proceeding before justices under section 210 of the Towns Improvement Clauses Act. *Mayor of Blackburn* v. *Parkinson*, 28 L. J. M. C. 7; 1 E. & E. 71; 5 Jur. (N.S.) 572; 22 J. P. 751; 33 L. T. (O.S.) 119. But this Act provides for the recovery of amounts below £50 in the county court (section 261), and makes the amount a charge on the premises (section 257). See the notes to these sections.

This section does not create the relationship of debtor and creditor between an owner and the local authority. The only means of recovering the expenses

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is that provided by the Act. Therefore a summons for leave to prove in an administration action for the amount awarded was dismissed by the Court of Appeal in *West* v. *Downman, post*, p. 167.

As to the several methods of enforcing payment of these expenses under this Act, see the notes to section 257, *post*, and especially the judgment of BRETT, L. J., in *Tottenham Local Board* v. *Rowell*, there quoted at length.

Summary proceedings having been taken against an owner for payment of his proportion of the expenses, the justices made an order on him adjudging him in default of distress to be imprisoned with hard labour. As the justices had no power to order hard labour, the quarter sessions on appeal quashed the order without going into the merits. Afterwards the local authority obtained a new order to pay the same amounts. It was held that the justices had jurisdiction to make the new order, the former having been quashed as null and void. *Lister* v. *Hebden Local Board*, 42 J. P. 119.

Orders having been obtained by a local board for payment by A., L., and others, of certain paving expenses incurred under this section, an agreement was come to that the order against L. should not be enforced for three months in order to enable a case to be stated for the opinion of the Court of Queen's Bench on a point of law. An understanding was at the same time come to that the order against A. should abide the decision in L.'s case. L., instead of taking the case to the Queen's Bench, went before the quarter sessions, and the order against him was quashed on a technical ground. (See *Lister* v. *The Hebden Local Board, supra*). A. was not informed of the course taken by L., and the three months having expired within which she should have appealed, the local board obtained an order against her for payment of the rate. On motion by A. to restrain the board from enforcing the order until she had had an opportunity of stating a case for the opinion of the Court of Queen's Bench, it was held that the court had power to restrain the board from enforcing the order, and on A. undertaking to consent to a case and to pay the money into court, the injunction was granted. *Ashworth* v. *Hebden Bridge Local Board*, 47 L. J. Ch. 195; 37 L. T. (N.S.) 496.

The court cannot enquire into the propriety of the expenditure. That is a matter entirely for the local board. *Bayley* v. *Parkinson*, *Cook* v. *Ipswich Local Board, infra*; and see *Chelsea* (*Vestry of*) v. *Evans*, 35 J. P. 23. They may, however, enquire into the original liability of the persons charged; for example they may and ought to decide whether the street is or is not a highway repairable by the inhabitants at large. *Hesketh* v. *Atherton Local Board, post*, p. 187. But the contention that the street is a public highway does not oust the jurisdiction of the justices. The magistrates may decide the question subject to appeal by special case under 20 & 21 Vict. c. 43, or to quarter sessions, but the order of the magistrates cannot be quashed on *certiorari* for want of jurisdiction. *Ex parte Wake, Reg.* v. *Sheffield* (*Recorder of*), 11 Q. B. D. 291; 31 W. R. 704; 52 L. J. M. C. 78; 47 J. P. 504, affirmed in C. A. 53 L. J. M. C. 1; 32 W. R. 82. The court must also enquire whether the road in question is a street, and their finding upon this as a matter of fact is conclusive. *Reg.* v. *Dayman*, 7 E. & B. 672; 3 Jur. (N.S.) 744; 26 L. J. M. C. 128; 22 J. P. 39; *Maude* v. *Baildon Local Board, supra.*

The provisions of 11 & 12 Vict. c. 43, s. 11, which limit the time within which proceedings can be taken before justices to a period of six months from the time when the matter of complaint arises, applies to the recovery of these expenses by summary proceedings; but the six months do not begin to run till after the expiration of the three months during which the apportionment may be disputed under section 257, *post*. *Jacomb* v. *Dodgson*, 32 L. J. M. C. 113; 3 B. & S. 461; 9 Jur. (N.S.) 848; 11 W. R. 308; 7 L. T. (N.S.) 674; 27 J. P. 548. See also per LUSH, J., in *Wilson* v. *Bolton* (*Mayor of*), *infra*, and the judgments in *West* v. *Downman, infra*. When a notice of apportionment was a nullity, and a second and valid notice was afterwards given, it was held that the time did not begin to run until after the second notice. *Sykes* v. *Huddersfield* (*Mayor, &c., of*), 35 J. P. 614.

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And the same limitation applies as well to proceedings in the county court under section 261, *post*. Therefore it was held that the amount of the expenses could not be recovered by action in the county court brought more than six months after the expiration of the three months allowed for disputing the apportionment. *Tottenham Local Board* v. *Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135; following *West Ham Local Board* v. *Maddam*, 1 Ex. D. 516 *n*; 33 L. T. (N.S.) 809; 40 J. P. 470. But it must not be assumed that the time runs from the date of the notice of apportionment so that at the expiration of nine months from that date the expenses cease to be recoverable summarily or in the county court under section 261. Before any proceedings can be taken to recover the expenses, it is necessary that a demand of payment should be served upon the owner, and that the time runs from the date of such demand, and not from that of the notice of apportionment, which is not a sufficient demand. See section 257, *post*; *Greece* v. *Hunt*, 2 Q. B. D. 389; 46 L. J. Q. B. 202; 36 L. T. (N.S.) 404; 25 W. R. 543; 41 J. P. 356. The court pointed out that this decision was not inconsistent with *Jacomb* v. *Dodgson* (*supra*), for in that case there had been a demand at the expiration of the three months after the notice of apportionment. It may be reconciled with the other cases cited for the like reason. Consequently there is no limitation of the time within which proceedings, whether summary or in the county court, must be taken unless a demand is made, and the demand may apparently be made at any time after the expiration of three months from the date of the notice of apportionment. Therefore when works were done and the amount apportioned in June, 1876, but no demand was made on the owner until the 31st December, 1879, it was held that a summons for payment was in time when brought on the 14th May, 1879. *Marr* v. *Greenwich Board of Works*, 44 J. P. 424.

It may be added here, that the six months' limitation does not apply to the enforcing of the charge on the premises in respect of these expenses which is created by section 257, *post*. *Tottenham Local Board* v. *Rowell*, 15 Ch. D. 378; 50 L. J. Ch. 99; 43 L. T. (N.S.) 616; 29 W. R. 36.

In a case heard by the county court judge of Liverpool (F. J. Collier, Esq.), work had been done by a local board under this section, and notice of apportionment was served on 29th March, 1878. On the same day a demand of the amount was served. Proceedings to recover the amount were instituted in the county court on the 7th October, 1878, and it then transpired that a second demand had been made on the 6th August. His Honour, in a considered judgment, held that the first demand was a nullity, as there was no liability to pay until the expiration of the three months after notice of apportionment. The second demand was therefore a good one and the proceedings were in time. This he considered to be the result of *Greece* v. *Hunt*, *supra*. In *Wilson* v. *The Mayor of Bolton*, *supra*, the notice of apportionment and the demand of payment had been served at the same time, but no objection was taken in argument on that ground, and so far as it was inconsistent with *Greece* v. *Hunt*, it must be considered to be over-ruled. *West Derby Local Board* v. *Bell*, 42 J. P. 812. The correctness of this decision was established in *Simcox* v. *Handsworth Local Board*, *ante*, p. 158. It was there held that the notice of apportionment concluding with a demand of payment was not a notice of demand within section 257, and that the time within which proceedings must be taken does not run from such demand.

If the complaint to recover the expenses is made in time, it is no objection to the validity of a summons that it is issued more than a year after such complaint. *Simcox* v. *Handsworth Local Board*, *ante*, p. 158.

In a case where the justices declined to make an order for payment, the board applied for and obtained a case under 20 & 21 Vict. c. 43. The respondent took no part in the statement of the case, and did not appear in support of the justices' decision. The court decided in favour of the appellants, and it was held that the respondent might be ordered to pay the costs of the appeal. *Wednesbury Local Board* v. *Stephenson*, 33 L. J. M. C. 111; 10 Jur. (N.S.) 151; 12 W. R. 414; 9 L. T. (N.S.) 731; 28 J. P. 261.

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It was held that when owners were liable for paving expenses under 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77, the vestry could not, in their discretion, charge the expenses upon the general rates. *Dryden* v. *Putney* (*Overseers of*), 1 Ex. D. 223; 34 L. T. (N.S.) 69; 40 J. P. 263 (and see per JESSEL, M. R., in *Taylor* v. *Oldham* (*Corporation of*), *ante*, p. 157. Accordingly the district board were ordered to restore to the general rate the amount they had, in fact, so expended, and to levy the same upon the owners of the adjoining houses and land according to the Act. *Attorney-General* v. *Wandsworth District Board of Works*, 6 Ch. D. 539; 46 L. J. Ch. 771.

A metropolitan district board were held entitled to recover as costs incidental to the paving, &c., under this section, the costs of serving notices of apportionment, obtaining names of owners, collection of amounts, advertisement and printing expenses. *Poplar Board of Works* v. *Love*, 29 L. T. (N.S.) 915; 38 J. P. 246. But this decision was given with reference to 25 & 26 Vict. c. 102, s. 77, which enables the board to recover all incidental costs and expenses. In the text the sum which may be recovered seems to be confined to the expenses of executing the work, and *quære* whether this includes incidental expenses such as those above mentioned.

As to the effect of the refusal to order expenses on the ground that the street is a highway, &c., upon a subsequent application under this section, see *Reg.* v. *Hutchins*, *supra*.

For a case in which a local board were held to be estopped from proceeding summarily, see *Gould* v. *Bacup Local Board*, *post*, p. 168.

As to the right to recover from a local board sums paid under this section by mistake, see *The Midland Railway Company* v. *Withington Local Board*, cited in the notes to section 264, *post*.

(*k*) See note (*e*), *supra*.

The Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), ss. 77 and 96, make the paving expenses recoverable by action from the present or future owners of the premises, or from any person who then or thereafter occupies the premises. The vestry of B. had recovered a judgment against a former owner of premises in respect of such expenses, which remained unsatisfied. It was held that such judgment was no bar to a subsequent action against the defendant, who occupied the premises as tenant to a succeeding owner. *Bermondsey* (*Vestry of*) v. *Ramsey*, L. R. 6 C. P. 247; 40 L. J. C. P. 206; 24 L. T. (N.S.) 429; 19 W. R. 774; 35 J. P. 567. Under the same Act it was held that the expenses might be recovered from the mortgagee in possession as owner, notwithstanding that another person was owner at the date when the improvement was resolved upon; *and that the expenses were a charge on the premises* (see section 257, *post*), and that the amount ought to be recovered from future owners, although there had been no arrangement to accept payment by instalments. *Plumstead Board of Works* v. *Ingoldby and Others* (*Trustees of the Planet Building and Investment Society*), L. R. 8 Ex. 174; 42 L. J. Ex. 136; 29 L. T. (N.S.) 375; 21 W. R. 817; 37 J. P. 759; affirming L. R. 8 Ex. 63; 42 L. J. Ex. 50; 27 L. T. (N.S.) 656; 31 W. R. 77.

The expenses cannot be recovered from one who, though the owner of premises when notice was first given by the urban authority, has ceased to be owner before the completion of the works. *Reg.* v. *Swindon Local Board*, 4 Q. B. D. 305; 48 L. J. Q. B. 119; 40 L. T. (N.S.) 424; 27 W. R. 732; 43 J. P. 431. "I cannot think it was ever intended by the legislature that when the owner has parted with his property, and somebody else is in possession of it, and therefore getting the benefit of the work done, and who ought, therefore, to pay the expenses incurred, it should be competent for the local authority to follow him up wherever he may have gone and hold him personally liable. I think that defect is remedied by section 257, which treats owners upon whom notice was originally served and who are owners at the time the work is completed, and the expenses demanded as the persons upon whom the local board shall be able to come for the expenses." Per COCKBURN, C. J.

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(*k*) An apportionment was made and notice given to an owner that his proportion was £20 2*s*. He did not pay, and a complaint was made before justices, when it was objected that the apportionment was bad, on the ground that the expenses of the two streets had been lumped together, and the aggregate amount divided among the owners in the two streets, and the justices dismissed the complaint on that ground. The surveyor then made a fresh apportionment, and a notice was served on the owner that his proportion was £19 11*s*. He gave notice that he disputed the apportionment, and the matter came before justices under a section corresponding to section 181, *post*. On a case stated by the justices it was held that the first apportionment was a nullity, and the surveyor, not being *functus officio*, was right in making a fresh apportionment. *Cook* v. *Ipswich Local Board*, L. R. 6 Q. B. 451; 40 L. J. M. C. 169; 24 L. T. (N.S.) 579; 19 W. R. 1079; 35 J. P. 565. Where an apportionment was signed by B., who was not then surveyor, having been superseded previously, the board on discovering the mistake issued a fresh notice and apportionment signed by their actual surveyor, treating the former notice as a nullity. It was held that the board had acted properly. *Sykes* v. *Huddersfield* (*Mayor, &c., of*), 35 J. P. 614. Where a local Act enacted that the proportion in which the expenses were to be apportioned was to be ascertained and settled by the corporation, it was held that the fact that the apportionment had been corrected by the surveyor to the corporation after it had been approved by the corporation did not invalidate it. *St. Helen's* (*Corporation of*) v. *Riley*, 47 J. P. 471. The decision in *Cook* v. *Ipswich Local Board* was considered in *Shanklin Local Board* v. *Millar*, 5 C. P. D. 272; 49 L. J. C. P. 512; 42 L. T. (N.S.) 788; 29 W. R. 63; 44 J. P. 635. In that case the apportionment was made in respect of five roads. The defendant had taken no steps to dispute the apportionment, and when proceedings against him were instituted in the county court, he contended that the apportionment was bad in law. A case was stated for the opinion of the High Court. DENMAN, J., referring to the former decision, said that it was not intended to decide "that an apportionment which is otherwise good on the face of it, is necessarily a nullity, and may be treated as such in any court before which it may come, because two streets instead of one are included in the apportionment; but the court meant this—viz., that when that is the case, and the parties have come to the conclusion that the apportionment cannot be enforced, and the surveyor makes a fresh apportionment, the former one becomes a nullity in the sense that it cannot be enforced, and is useless for particular purposes and cannot stand in the way of a good apportionment. That is, to my mind, the full extent of the decision, and it is not a decision that, if no steps are taken to set aside or dispute the apportionment on the ground that the party charged is not liable, it may be treated as a nullity when it comes before the court." The court, therefore, held that the defendant was liable to pay the amount claimed. It appears from these cases that an apportionment if made in respect of the paving, &c., of more than one street, may be objected to under section 257, *post*, but that if this is not done the owner is liable for the amount apportioned.

Buildings and land belonging to the defendants abutted upon a new street which a metropolitan vestry ordered to be paved over half its breadth only, the part paved being that nearest the defendant's premises. The vestry apportioned the whole cost of paving upon the houses forming the defendant's side of the street, omitting those on the other side. It was held that the apportionment was invalid, and that the owners on both sides of the street ought to have been charged. *Mile End* (*Vestry of*) v. *Whitechapel* (*Guardians of*), 1 Q. B. D. 680; 46 L. J. M. C. 138; 35 L. T. (N.S.) 354; 24 W. R. 719; 40 J. P. 565, affirming 45 L. J. M. C. 75; 34 L. T. (N.S.) 178; 24 W. R. 364. But this decision was given with reference to the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), s. 77, which imposes a liability on the owners of houses forming the street, and on the land bounding and abutting on such street. The language used in the text is different, and where, therefore, an

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urban authority paved a footpath on one side of a street, and apportioned the cost among the owners on that side only, it was held that the apportionment was right. *Wakefield Urban Sanitary Authority* v. *Mander*, 5 C. P. D. 248; 28 W. R. 922; 44 J. P. 522.

There does not appear to be any limitation of the time within which an apportionment must be made. *Bradley* v. *Greenwich District Board of Works*, 3 Q. B. D. 384; 47 L. J. M. C. 111; 38 L. T. (N.S.) 849; 26 W. R. 693; 42 J. P. 725.

(*l*) Section 257, *post*, limits the time within which the notice of dispute is to be given. See *Hesketh* v. *Atherton Local Board*, L. R. 9 Q. B. 4; 38 J. P. 149.

The arbitration here referred to has reference not to a dispute between the frontagers generally on one side, and the urban authority on the other, but a dispute in which the owner of a particular set of premises complains of the apportionment as regards himself personally. There must be as many separate arbitrations as there are disputing owners, for every disputing owner may appoint an arbitrator. Therefore, an award between one of several frontagers called upon to pay the expenses of paving a street and an urban authority, by which the arbitrator has altered not merely the assessment upon the particular frontage, but the assessment in regard to all the frontagees, is not binding upon a frontager not a party to the arbitration, so as to entitle the urban authority to recover from him the sum which would be due from him on the footing of the altered assessment. *Tunbridge Wells Local Board* v. *Akroyd*, 5 Ex. D. 199; 49 L. J. Ex. 403; 42 L. T. (N.S.) 640; 28 W. R. 450; 44 J. P. 504.

When a notice of apportionment has been served upon an owner, and is met by a counter-notice disputing the amount alone, such demand may be the subject of arbitration, but when the counter-notice disputes the liability to pay, the liability must be determined in the manner provided by the Act, *i.e.*, by summary proceedings (or by action in the county court under section 261, *post*). In such proceedings the justices or the county court judge may exercise jurisdiction as to amount as well as liability. *West* v. *Downman*, 14 Ch. D. 111; 42 L. T. (N.S.) 340; 29 W. R. 6.

The text only authorizes an arbitration in respect of the proportion to be borne by a defaulting owner, and not in respect of any question as to the expenses being reasonable or properly incurred by the local authority. *Bagley* v. *Wilkinson*, 33 L. J. M. C. 161; 16 C. B. (N.S.) 161; 12 W. R. 797; 10 L. T. (N.S.) 543. When a dispute as to the apportionment comes before justices as arbitrators under section 181, *post*, and equally when the matter comes before them on a complaint to enforce payment, they have no jurisdiction to enquire into the question whether the amount alleged has been actually incurred. If the appellant is aggrieved by the alleged overcharge, his remedy is by appeal to the Local Government Board under section 268, *post*. *Cook* v. *Ipswich Local Board*, *ante*, p. 166. It has been held with reference to the Metropolis Management Acts, 18 & 19 Vict. c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77, that the principle upon which the expenses have been apportioned cannot be questioned before any tribunal. *Nesbitt* v. *Greenwich Board of Works*, L. R. 10 Q. B. 465; 44 L. J. M. C. 119; 32 L. T. (N.S.) 762; 24 W. R. 223; 39 J. P. 582. See section 268, *post*. A notice to pave and a notice of apportionment are not, but a demand of payment is a *decision* within that section from which an appeal lies to the Local Government Board. *Reg.* v. *The Local Government Board*, 9 Q. B. D. 600; 51 L. J. M. C. 121; 46 J. P. 820, affirmed on appeal, 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. (N.S.) 173; 31 W. R. 72; 47 J. P. 228; *Ex parte Wake*, *Reg.* v. *Recorder of Sheffield*, *ante*, p. 163.

For the provisions of this Act as to arbitration, see section 179, *post*.

(*m*) See section 213, *post*.

A local board demanded from an owner his proportion of the expenses in January, 1861. This amount not having been paid, on the 25th August, 1870, the board resolved that it should be declared private improvement expenses; and in September, 1870, they declared these expenses to be payable by annual instalments. It was held that the demand in 1861 amounted to an election to

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treat the amount due as a debt from the owner, and that they had no power to declare it to be private improvement expenses. *Wilson* v. *Bolton* (*Mayor, &c., of*), L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. 597; 36 J. P. 405.

Where an urban authority gave a notice in the form given in Schedule IV., Form G, but added to the notice words not in the form to the effect that if the owner neglected to do the work, they would do it, and declare the expenses of such work to be private improvement expenses, it was held that they were estopped by the terms of their notice from taking summary proceedings for the recovery of these expenses. *Gould* v. *Bacup Local Board*, 50 L. J. M. C. 44; 44 L. T. (N.S.) 103; 29 W. R. 471; 45 J. P. 325.

(*n*) The meaning of the paragraph was thus explained in *Maude* v. *Baildon Local Board*, *ante*, p. 154, by POLLOCK, B.: "Its effect is not to say that wherever there is a (public) footpath running parallel the rest of ground is in such a case to be deemed a street. It merely means to say that in all those cases in which the magistrates could properly find the residue to be a street, that power of so finding is not to be taken away in consequence of the fact that there is a public footpath."

See also *Mile End* (*Vestry of*) v. *Whitechapel*; *Wakefield Local Board* v. *Lee*; *Dryden* v. *Putney* (*Overseers of*); *Attorney-General* v. *Wandsworth Board of Works*, *supra*.

Exemption from expenses under last section of incumbent of church, &c.

151. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor (*a*), shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress execution or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted (*b*).

(*a*) The statute which provides for the exemption from poor rate of churches and chapels is 3 & 4 Will. 4, c. 30. It provides that no person shall be rated, or shall be liable to be rated, or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provisions of any Act or Acts now in force. Provided always that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any part of such churches, district churches, chapels, meeting houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage. (Section 1.) Provided always that no person or persons shall be liable to any such rates or cesses, because the said churches, chapels, meeting houses, or other premises, or any vestry-rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor. (Section 2.)

So far as the text goes, it only exempts the incumbent or minister; therefore, the trustees, other than the incumbent or minister, would be liable. But the clause provides that the expenses shall not be a charge on the church or

chapel, or churchyard or burial ground, and as the expenses do not form a debt in the ordinary sense for which the trustees would be personally responsible (see *West* v. *Downman, ante*, p. 167), it would probably be held that they are not liable to be assessed. Note to Sect. 151.

It was decided in *Bowditch* v. *Wakefield Local Board*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 25 L. T. (N.S.) 88; 36 J. P. 197, that a national school is not exempt, and that one of the trustees is liable to pay the proportion of the expenses in respect of such school. A school board are also liable in respect of their schools. *London School Board* v. *St. Mary, Islington* (*Vestry of*), *ante*, p. 159. 32 & 33 Vict. c. 40, provides that every authority having power to impose or levy *any rate* upon the occupier of any building used exclusively as a Sunday school or ragged school *may* exempt such building or part of a building from any *rate* for any purpose whatever which such authority has power to impose or levy. But *quere* whether the proportion of expenses under the last section is a *rate* within the meaning of this Act.

A burial ground which is not attached to any church or chapel is not exempt under this section, though it is partially exempt from poor or local rates under 18 & 19 Vict. c. 128, s. 15.

Under a local Act which required the churchwardens or chapelwardens for the time being of any parochial church or chapel to pay the paving rates assessed upon such church or chapel, it was held that a district church erected under 6 & 7 Vict. c. 37, was not exempt from being rated, and the churchwardens were liable to pay the rates although they had no parochial funds for that purpose. *Mills* v. *Rydon*, 10 Ex. 67; 23 L. J. Ex. 305; 2 C. L. R. 1045; 18 J. P. 633.

There is no such exception as this in the metropolis. The trustees of a dissenting chapel were, therefore, held liable under 18 & 19 Vict. c. 120, s. 105. *Caiger* v. *St. Mary, Islington*, 50 L. J. M. C. 59; 44 L. T. (N.S.) 605; 29 W. R. 538; 45 J. P. 570. But it was otherwise held with respect to a church which was consecrated and so dedicated to permanent and unalterable uses. *Angell* v. *Paddington* (*Vestry of*), L. R. 3 Q. B. 714; 16 W. R. 1167.

(*b*) The previous section requires the authority to give notice to the owner and occupier of the premises to make the street, and in their default empowers them to do the work themselves. This proviso, therefore, deals with the case where, the minister being exempt, there may be no *owner* liable to do the work, and consequently no default.

152. When any street within any urban district *not being a highway repairable by the inhabitants at large* (*a*) has been sewered levelled paved flagged metalled channelled *and* made good *and* provided with proper means of lighting to the satisfaction of the urban authority (*b*), such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a *highway*, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority. Power to declare private streets when sewered, &c., to be highways.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the *proprietor* or the majority in number of *proprietors* (*c*) of such street, by notice in writing to the urban authority, object thereto, and in

Sect. 152. ascertaining such majority joint proprietors shall be reckoned as one proprietor (*d*).

(*a*) As to the meaning of these words, see *ante*.

(*b*) Note the use of the copulative. This section is not a complement to section 150. In order that a local authority may declare a street, not repairable by the inhabitants at large of their district, to be a highway, so that it may become repairable by the inhabitants at large, it is necessary that each of the works specified in section 152 shall, at the time of declaration, have been executed upon the street to the satisfaction of the local authority. A local authority has not, under this section, any discretion as to which of the works mentioned in the section they will require to be executed. Their discretion is limited to their being satisfied with the efficiency of each description of work when done. *Semble*, that kerbing a road does not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and *semble*, that wooden paving does not come within the meaning of any of the requirements of the section. *Attorney-General* v. *Bidder*, 47 J. P. 263. It may be doubted whether the dictum as to wood paving would now be followed.

(*c*) This is a substitute for the provision in the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 23, relating to the dedication of roads to the public.

A landowner in a district under the Public Health Act, 1848, gave notice to the local board of his intention to dedicate a certain road as a highway, to which the board replied that they would not adopt the road as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The landowner, however, obtained and enrolled the certificate of two justices under 5 & 6 Will. 4, c. 50, s. 23, and the public then used the road, which was kept in repair by the landowner for twelve months; after which, it being out of repair, an indictment was preferred against the parish. It was held that the inhabitants were not liable, inasmuch as the road had not become a highway; for that, assuming 5 & 6 Will. 4, c. 50, s. 23, to apply to the case, the road had not been made to the satisfaction of the local board, who were the surveyors. WIGHTMAN, J., expressed an opinion that section 23 was not inconsistent with the Public Health Act, for the board had a discretion as to the amount and kind of repairs to be done to the road, and they might require the road to be paved, &c., having reference to those sections of the Act of 1848 corresponding with sections 150, 152, *post*. *Reg.* v. *Dukinfield*, 32 L. J. M. C. 230; 4 B. & S. 158; 27 J. P. 805.

There is no definition of the word *proprietor*, which is not a legal term having any distict meaning. See *Lister* v. *Lobley*, 7 A. & E. 124; 6 L. J. K. B. 200, where it was held, in a clause giving compensation to *owners or proprietors*, that these words applied not only to the owners in fee-simple, but to lessees for terms of years also. In *Rossiter* v. *Miller*, 5 Ch. D. 648; 46 L. J. Ch. 228; 36 L. T. (N.S.) 304; 25 W. R. 890, JESSEL, M. R., said: "Is there any doubt that, according to ordinary language, the word *proprietors* means *owners*, and the word *owners*, proprietors?" Having regard to this and the preceding sections, the word as used in the text is probably equivalent to *owners*.

(*d*) If there be several proprietors, it is difficult to see how they can be other than joint proprietors. The legislature probably intended to provide for classes of several proprietors, in which case one person might be a proprietor of one part of the street, while several might be the joint proprietors of another part. In such a case there would be one vote in respect of each part. But if the question turn upon the proprietorship of one part which belongs to several persons, they must all have separate votes.

It is presumed that the objection may be withdrawn, and the street be made a highway.

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Power to require gas and water.

153. Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks (*a*) or gasworks laid in or under any street (*a*), they may by notice in writing (*b*) require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required (*c*):

Provided—

That no such alteration shall be required or made which will *permanently* (*d*) injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed (*e*).

(*a*) For the definition of *waterworks*, see section 4, *ante*, p. 14; and for that of *street*, see the same section, *ante*, p. 9.

(*b*) See, as to the authentication and service of the notices, sections 266, 267, *post*.

(*c*) At their own expense.

(*d*) As slight or temporary injury may be done, there may in such case be a claim for compensation under section 308, *post*.

(*e*) This liability will not arise upon the action of the urban authority for their own purposes.

Power to purchase premises for improvement of streets.

154. Any urban authority may purchase any *premises* (*a*) for the purpose of widening opening enlarging or otherwise improving any *street* (*b*) or (with the sanction of the Local Government Board) (*c*) for the purpose of making any new street (*d*).

(*a*) See the definition in section 4, *ante*, p. 6.

(*b*) See the definition in section 4, *ante*, p. 9. See also note (*a*) to section 150, *ante*, p. 153.

(*c*) Application should be made in writing upon foolscap paper to the board, under the hand of the town clerk or clerk of the local authority; no special

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form is required, but the necessity or the expediency of the proposal should be set forth. It should be addressed to the president of the board under cover to the secretary.

(*d*) As to the power to purchase the requisite land, see section 175, and subsequent sections, *post*.

It is to be observed that though the local authority can, under this section, add land to a highway, they cannot take away any land from the highway, even if such land has, by reason of a part added, become unnecessary. A highway cannot be stopped up or diverted except pursuant to the Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 84-91. *Reg.* v. *Platts*, 49 L. J. Q. B. 848; 43 L. T. (N.S.) 159; 44 J. P. 765; 28 W. R. 915.

Power to regulate line of buildings.

155. When any *house* or *building* (*a*) situate in any *street* (*b*) in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe *the line* (*c*) in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith (*d*).

The urban authority shall pay or tender compensation to the *owner* (*e*) or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act (*f*).

(*a*) See the definition of *house* and *building* in section 4, *ante*, pp. 11, 12.

(*b*) For the definition of a street, see section 4, *ante*, p. 9. See also note (*c*) to the next section.

For the proviso as to railway buildings, see section 157, *post*.

(*c*) The line of street need not be a strict mathematical line; it means substantially such a line as shall preserve uniformity of appearance. Per WILLIS, J., in *Tear* v. *Freebody*, 4 C. B. (N.S.), at p. 262; 31 L. T. (O.S.) 131; *Fear* v. *Freebody*, 6 W. R. 520; *Sear* v. *Freebody*, 22 J. P. 707.

The corporation of F. had power under a *local* Act to prescribe the line in which any houses to be thereafter built or taken down for the purpose of being rebuilt or altered should be executed, on payment of compensation to the owner of any house required to be set back, and it was also provided that no new street to be thereafter laid out should be of less width than 40 feet, inclusive of footways, and in the case of existing streets, houses to be thereafter erected were to be set back so as to allow of a width of 40 feet. A temporary church, fronting a road less than 40 feet wide, having been pulled down with a view to erecting a permanent church, the corporation gave notice to the clergyman in charge at the time of a resolution passed by them that the road must be not less than 40 feet wide; but there was no statement that the additional width was to be gained on the side on which the church abutted, and it appeared that the street might have been widened on the side opposite without removing any buildings. Afterwards, but not until the foundations of the new church had been put in, the corporation prescribed a line of building which came within the limits of the church as designed. Held, that they were too late, and could not restrain the erection of the church in the manner in which it had been commenced. *Corporation of Folkestone* v. *Woodward*,

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L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. (N.S.) 574; 21 W. R. 97; 37 J. P. 324.

(*d*) The erection in violation of this section may be prevented by injunction, or, if complete, will subject the builder to an indictment. But when the owner of a factory, being desirous of rebuilding it, submitted his plans to the local board, and, on the plans being approved, proceeded to pull down the factory and re-erect it according to the plans, it was held that the board could not, under the corresponding provisions of the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 35, require him to set back his premises, and the board were restrained from interfering. *Slee* v. *Bradford* (*Corporation of*), 4 Giff. 262; 8 L. T. (N.S.) 491; 9 Jur. (N.S.) 815; 1 N. R. 386; 27 J. P. 612. In a similar case the owner of a house after having, in accordance with a bye-law, left, on the 16th October, a plan of an intended new building, the local board passed a resolution that the plan was approved of, and that he should be offered £40 for certain land of his thrown into the street. He refused to accept the £40, but proceeded with his works, and by the 26th October had pulled down the front wall of his house. On the 27th the board passed a resolution abandoning the terms before offered, and requiring him to set his frontage further back, notice being given under the above section. On the 27th November the owner proceeded with his building, and on the 21st December he was required to pull down his new building. It was held that, the local board having approved a plan and having allowed the owner to pull down the front wall of his house, they could not afterwards avail themselves of the powers given by this section. *Masters* v. *Pontypool Local Board*, 9 Ch. D. 677; 47 L. J. Ch. 797.

(*e*) See the definition in section 4, *ante*, p. 6.

(*f*) See section 179, *post*.

Buildings not to be brought forward.

156. It shall not be lawful in any *urban* district, without *the written consent* (*a*) of the urban authority, to bring forward any *house* or *building* (*b*) forming part of any *street* (*c*), or any part thereof beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same (*d*).

Any person offending against this enactment shall be liable to a penalty not exceeding *forty shillings* for every day during which the offence is continued after written notice in this behalf from the urban authority (*e*).

(*a*) The authority cannot consent otherwise than in writing, and the ordinary doctrine of acquiescence does not apply. Per JESSEL, M. R., in *Kerr* v. *Preston* (*Corporation of*), *post*.

(*b*) The corresponding words of the Metropolitan Act (25 & 26 Vict. c. 102, s. 75), are "building, structure, or erection." A small conservatory having been erected over a projecting shop front in a street, and the magistrate having decided that it was not an erection within the meaning of that section, the court refused to review his decision. *St. George, Hanover Square* (*Vestry of*), v. *Sparrow*, 33 L. J. M. C. 118; 16 C. B. (N.S.) 209; 10 L. T. (N.S.) 504; 10 Jur. (N.S.) 678; 12 W. R. 832.

See the definition of *house* and building in section 4, *ante*, pp. 11, 12. In *Brown* v. *Holyhead Local Board*, *infra*, POLLOCK, C. B., doubted whether a wall was a building within the corresponding enactment in 21 & 22 Vict. c. 98, s. 35. Bay windows are probably buildings within this and the next section. See *Lord Manners* v. *Johnson*, 1 Ch. D. 673; 45 L. J. Ch. 404; 24 W. R. 481; 40 J. P. 345.

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(*c*) For the definition of street, see section 4, *ante*, p. 9.

T. had a house abutting on a pavement alongside a turnpike road, on which road tolls were taken, and which was repaired by the county roads board; but it was within the jurisdiction of an urban sanitary authority in South Wales. T. was proceeded against under this section for bringing forward his house beyond the line of street without the consent of the urban authority. Held, that this was a street within the meaning of the section, though it was also a turnpike road, and that notwithstanding the definition of a street in section 4. *Thomas* v. *Roberts*, 43 J. P. 574.

For the proviso with respect to railway buildings, see the next section.

(*d*) 25 & 26 Vict. c. 102, s. 75, which is the corresponding enactment relating to the metropolis, differs materially from the text, and the decisions given with reference to that section afford no guide to the interpretation of the text. When, however, they bear upon any point which is common to the two sections, they are quoted *infra*.

25 & 26 Vict. c. 102, s. 75, was held not to apply to ground formerly covered with buildings, unless the owner had relinquished his right of rebuilding on the same site. When, therefore, the district board threatened to proceed under section 75 to demolish houses which were being rebuilt on an old site, on the ground that they were beyond the general line of buildings, it was held that they were acting *ultra vires*, and that they might be restrained by the Court of Chancery. It was held that in such a case the board ought to have proceeded under section 74 (corresponding to section 155, *ante*), which provided for compensation to the owners; and where a railway company took land covered with houses, and pulled down the houses for the purpose of constructing their railway, and then sold the land as building land to the plaintiff, it was held that the plaintiff had not lost the right to rebuild the houses on the same site as that occupied by the houses before they were pulled down, and that for this purpose the yard of a house was equivalent to a house. *Auckland* (*Lord*) v. *Westminster District Board of Works*, L. R. 7 Ch. 597; 41 L. J. Ch. 728; 26 L. T. (N.S.) 961; 20 W. R. 845. See, however, the remarks of JESSEL, M. R., in *Kerr* v. *Preston* (*Mayor, &c., of*), *post*, p. 175, on this case, in so far as it relates to the power of the court to restrain a local board from taking proceedings before a magistrate. The court assumed in this case that the board were about to demolish the buildings themselves.

It was held that 25 & 26 Vict. c. 102, s. 75, applied, whether the street became a highway in the legal sense of the term or not. A street in the metropolis had been newly laid out, and buildings completed along half of it, each building having a space of about five feet between the front line and the edge of the foot pavement. N. built stables in one plot on the same side, coming close to the foot pavement. The street had no gate at either end, and was already watered and sewered by the vestry. It was held that N. was liable to the penalty under the section. *Poplar Board of Works* v. *North Metropolitan Tramway Company*, 43 J. P. 590.

The owner of a plot of land covered with buildings obtained leave of the Metropolitan Board of Works to make a new street across it, and the line of buildings in the new street was duly certified by the architect of the board. At one end of the street the owner of the land pulled down the old buildings and built a house fronting another road, but having one side in the new street, which projected beyond the building line of such new street. A magistrate having made an order under 25 & 26 Vict. c. 102, s. 77, for the demolition of so much of the house as projected beyond the building line of the new street, it was held that he had jurisdiction to make the order, as the house was in the new street. *Barlow* v. *St. Mary Abbot, Kensington* (*Vestry of*), 32 W. R. 966.

In a suit by the Ecclesiastical Commissioners against a vestry in regard to the erection of a church within one of the metropolitan districts, it was held by one of the vice-chancellors that the corresponding section of the Metropolis Management Act (18 & 19 Vict. c. 120, s. 143), did not confer on the

building churches, but this decision was reversed on appeal. *Ecclesiastical Commissioners* v. *Clerkenwell* (*Vestry of*), 30 L. J. Ch. 454; 3 De G., F. & J. 688; 4 L. T. (N.S.) 599; 9 W. R. 681; 25 J. P. 580. Note to Sect. 156.

It is to be observed that the provisions of this section will not override those of a special Act passed previously, when the latter authorizes the erection of buildings in a street. See *The London and Blackheath Railway* v. *Limehouse Board of Works, ante.*

(*e*) This summary process is new under the previous enactment, which only prohibited the act; the offender was held to be liable as for a common law misdemeanor, and was punishable accordingly. *Reg.* v. *Fullford*, 33 L. J. M. C. 122; 10 L. T. (N.S.) 346; 10 Jur. (N.S.) 522; 12 W. R. 715; 28 J. P. 357. In that case it was proved that a house surrounded by a garden alongside a highway had been so brought forward by the defendant beyond the front wall of the houses on either side that alongside the same highway there were other houses in gardens, separated from each other by their respective gardens, and standing irregularly and at different distances from the highway. It was held that it was a question of fact for the jury whether the houses formed a street for the purposes of the section under which the proceedings were taken. The court intimated that in order to constitute a street, there must be a row of houses sufficiently continuous and proximate to one another; and that a set of detached houses not being in a continuous line, but some facing one way and some another, and having no appearance of uniformity was not a street within the section.

Having regard to the fact that the statute provides a summary remedy for a breach of this section, it is probable that an indictment would not lie in respect of such breach; the rule being that an indictment lies for breach of the provisions of a statute only when a specific remedy has not been provided by the statute. *Reg.* v. *Lovibond*, 24 L. T. (N.S.) 357; 19 W. R. 753; 36 J. P. 20; following *Reg.* v. *Robinson*, 2 Burr. 799. It will be observed that the local authority are not empowered to demolish a building erected contrary to this section, nor has a justice power to make an order to that effect, unless perhaps when the highway is obstructed. See *Bagshaw* v. *Buxton Local Board*, *ante*, p. 148.

The plaintiffs, owners of a house and area situate in and fronting a street, altered the front of the house by throwing out bay windows projecting beyond the street line of frontage but not beyond the limits of the area. After the completion of the work the defendants, the local authority, threatened the plaintiffs with summary proceedings under this section. The plaintiffs then moved *ex parte* for an injunction to restrain the defendant from taking those proceedings, alleging (1) that as the alteration had been made over their own property, the defendants in threatening proceedings were acting *ultra vires*; (2) that the defendants having had notice of the plaintiffs' intention to make the alterations were bound by acquiescence; and (3) that the justices had no jurisdiction, as the defendants had not made their complaint within six months after the alleged offence as required by section 252. The motion was refused on the ground that the court could not restrain criminal proceedings, and that the grounds of interference were matters of defence to be used before the magistrates. *Kerr* v. *Preston* (*Corporation of*), 6 Ch. D. 463; 46 L. J. Ch. 409; 25 W. R. 265.

An offence to which this penalty is applicable continues as long as the addition to the house is maintained after written notice from the urban authority, notwithstanding that the addition may have been completed before the notice was given. *Rumball* v. *Schmidt*, 8 Q. B. D. 603; 46 L. T. (N.S.) 661; 30 W. R. 949; 46 J. P. 567.

As to the recovery of the penalty, see section 251, *post*; and as to the notice, sections 266, 267, *post.*

157. Every *urban* authority may make *bye-laws* (*a*) with respect to the following matters; (that is to say,) Power to make bye-laws

Sect. 157. respecting new buildings, &c.

(1.) With respect to the level width and construction of *new streets* (*b*), and the provisions for the sewerage thereof:

(2.) With respect to the structure of walls foundations roofs and *chimneys* (*c*) of *new buildings* (*d*) for securing stability and the prevention of fires, and for purposes of health (*e*):

(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings (*f*):

(4.) With respect to the drainage of buildings, to water-closets earth-closets privies ashpits and cesspools in connection with buildings (*g*), and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation (*h*):

And they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving of *notices* (*i*), as to the deposit of plans (*k*) and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) (*l*) to remove alter or pull down any work begun or done in contravention of such bye-laws (*m*): Provided that no bye-law made *under this section* (*n*) shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament (*o*).

(*a*) See as to the making, confirming and publication of bye laws, sections 182—6; and as to the enforcing of them, section 251. It is presumed that though the urban authority may be otherwise empowered to make bye-laws on these subjects, they may nevertheless act under this section; see section 341, *post*.

(*b*) It has already been noticed that an ancient highway may become a new street within the meaning of this and other sections of the Act if houses are built along its sides so as to make it a street in the ordinary acceptation of the term. *Pound* v. *Plumstead Board of Works*, *Dryden* v. *Putney* (*Overseers of*), *Robinson* v. *Barton Local Board*, *ante*. In the last of these cases, JESSEL, M. R., said (at 21 Ch. D.), "There are two ways in which a street may come into existence where there was no street before. A person may take a grass field, or a country lane (for

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in my opinion it makes no difference whether or not there was a public highway and lane, or a footpath existing before which is thrown into the street, and is utilized, or whether there was nothing but a mere plot of grass land out of which a new roadway is made), he may take it and build continuous lines of houses so as to form what is commonly known as a street. When I say continuous lines, I do not mean that there are to be no breaks or intervals, but there must be a certain degree of continuity. A new street may arise in another way, and that is, where it is not from the first laid out as a street in a formal manner, but may be considered to grow up, so to say, of itself. This often happens where there is an existing highway, and people build houses along the sides of that highway, so that, without any intention of laying out a street, the street grows. When does it become a street? This question cannot be answered until you know the locality. It must be a question in each particular case when the road becomes a street. At some time or other it becomes a street, and as soon as it does so it is a new street, and not the less a new street because some of the houses were built before it was a street." In the same case when before the House of Lords (8 App. Cas., at p. 801), Lord SELBORNE, C., referring to the definition of "*street*," in section 4, *ante*, p. 9, said that the definition was not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there was nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." And he continued, "I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject matter and the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word *street*, or the words *new street*, I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by *new street* a place which before had not that character, but which by the construction of buildings on both sides, or possibly on one side, has acquired it."

"Whether an intended building is sufficient to make a street is a question of more or less. One house would not be sufficient. Whether the intended houses are sufficiently numerous and continuous is a question of degree, and must be a question of fact for the magistrate. When may the owner be said to have begun to lay out the road for that purpose? I do not think that if a person merely puts up a hoarding or leaves the way without any fence, or leaves the old fence untouched while he is building, he can be said to have laid out the road; but as soon as he begins to put up fences, and marks out the boundary which he intends to be the permanent boundary between his building and the road, then he may be said to have begun to lay out the road for the forming of the street; and this also is a question of fact for the magistrate." Per BLACKBURN, J., in *Taylor* v. *The Metropolitan Board of Works*, L. R. 2 Q. B. 213; 36 L. J. M. C. 53; 31 J. P. 581; 15 W. R. 765. In that case several plots of land had in 1864 been sold for building purposes. These plots abutted on a lane which was an ancient carriage way, and had buildings at intervals on both sides erected before 1862. The lane varied in width from 41 to 28 feet, which was the width opposite the plots, and on the other side of the road was a permanent enclosure belonging to a church, and other buildings erected before 1862. In July, 1865, A. bought the plots, houses having been erected on two of them, the front walls of the houses being 27 feet from the old wooden boundary fence of the lane. On September 26th he began to remove the fence which had been left untouched, and to substitute a permanent wall and railing. The magistrate having found that he thereby intended to lay out the road for building as a street, convicted him under 25 & 26 Vict.

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c. 102, s. 98, which requires a new street to be widened to the width of 40 feet. It was held, however, that this enactment would have been satisfied had A. set back his fence to a distance of 20 feet from the crown of the road, although the result would have been to leave the road less than 40 feet wide if measured from the other side.

This case may be usefully compared with one decided in the following year with reference to the same section. In the latter the respondent was the owner of land upon which he had in 1866 erected some houses, the gardens in the rear of which abutted upon an ancient lane, and some of the owners of land adjoining this lane had in 1867 begun to form it into a street for carriage traffic within the meaning of the section. The respondent himself had done no act towards forming or laying out the lane as a street for the purposes of carriage traffic, otherwise than by the removal in 1866 of an old bank and thorn fence and the substitution of an oak fence three feet within his own land, nor had he any intention of doing any such act, or of putting up any building fronting towards the lane. Held, that he had not committed any offence against the Act, and was not bound to set back his oak fence so as to leave a space of 20 feet between it and the centre of the lane. *Metropolitan Board of Works* v. *Clever*, L. R. 3 C. P. 531; 37 L. J. M. C. 126; 18 L. T. (N.S.) 723; 16 W. R. 1016. It had previously been held that the section did not apply when new buildings abutted in the rear upon an old lane of less width than 40 feet. *Metropolitan Board of Works* v. *Cox*, 19 C. B. (N.S.) 445.

The owner of certain building land gave notice to the urban authority of his intention to lay out certain new streets, including a certain back street, and deposited plans of such streets. Notice was also given by the defendant, a builder, of his intention to dig and lay out the foundations of four cottages in the back street, and a plan of such street was deposited by him. In the plans deposited by the owner and builder, the back street, in which it was intended to build the cottages, was shown to be only twelve feet wide, whereas the minimum prescribed by the bye-laws was 18 feet. The authority accordingly gave the owner and the defendant notice of their disapproval of such plans, and on the latter proceeding to build the cottages according to the disapproved plans, the appellants took out a summons against the defendant for unlawfully laying out a new street of insufficient width, contrary to their bye-laws. This summons was dismissed; and on a case stated it was held to have been rightly dismissed, as the owner, and not the builder, was the person who had laid out the streets. *Sunderland* (*Mayor of*) v. *Brown*, 44 J. P. 831. Per HAWKINS, J.," "All that the builder was employed to do was to build certain cottages upon the line of a street already laid out."

T., having land upon which he proposed to build six houses, sent a notice and plan showing what he intended to do, and where a new street of ten yards wide was to be. The board sanctioned the houses, and they were built. Some years afterwards T. was summoned for disobeying the bye-law in not leaving a space of 30 feet wide for the street. The fact was that his land extended only nine feet in front of the houses, but this was not known to the board until afterwards. T. was convicted. It was held on a case stated that the conviction was wrong, and that the local board ought to have satisfied themselves before sanctioning the plan that T. had land of sufficient width to make the proposed new street when the houses should be completed. *Thompson* v. *Failsworth Local Board*, 46 J. P. 21.

W. had ground abutting on one side of a lane 250 feet long and six feet wide, adjoining a town. There were no houses in the lane. W. built six cottages standing back 15 feet from the lane. The lane was within an urban district, the bye-laws of which required new streets (not being carriage ways) to be 18 feet wide. W. was convicted of having laid out a new street contrary to the bye-laws. It was held that the conviction was wrong, the mere fact of six cottages being built in the lane not making it a new street. *Williams* v. *Powning*, 47 J. P. 486; 48 L. T. (N.S.) 672.

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This sub-section refers to the buildings on the side of the street as well as to the roadway. The word construction refers both to roads and buildings by the side of roads. Therefore a bye-law was held to be valid which provided that no building should be erected by the side of any new street, or to which any new street would form the only carriage approach until such street had been constructed to the approval of the board. *Baker* v. *Portsmouth* (*Mayor, &c., of*), *post*, p. 182. And see per Lord SELBORNE, C., in *Robinson* v. *Barton Local Board*, *ante*, p. 177. From the judgment in the latter case, however, it may be inferred that a bye-law cannot be made under this sub-section for the purpose of regulating the line of buildings, for the word *street* as here used means the public way, and not the distance from the external wall of a house (as distinct from its curtilage) on one side of the street to the external wall of the opposite house (if there is one) on the other side.

It is not necessary that the new street should be dedicated to the public. *St. Mary Islington* (*Vestry of*) v. *Barrett*, *ante*, p. 157. See also *Bowles* v. *St. Mary, Islington*, *ante*, p. 10.

A line of railway was situate in a deep cutting, and was crossed by a bridge. A line of houses terminated at the eastern end of the bridge, and after crossing the bridge there was but one cottage and the roadway ceased to be a public thoroughfare, being closed by a private gate. It was held that the road ceased to be a new street within the meaning of 25 & 26 Vict. c. 77, at the eastern extremity of the bridge. *London Brighton and South Coast Railway Company* v. *St. Giles, Camberwell* (*Vestry of*), *ante*.

The Manchester Improvement Act, 8 & 9 Vict. c. cxli. s. 29, provided that no street should be made of less width than 24 feet; and section 30 provided that it should not be lawful to build within the borough any houses with their fronts facing each other, which should be separated from each other by a space of less than 24 feet wide. It was held that these provisions prohibited the erection in a street of two houses at the same time, with their fronts facing each other, within the prescribed distance, and did not affect the erection of buildings not in a street. *Reg.* v. *Sidebotham*, 28 L. J. M. C. 189; 33 L. T. (o.s.) 187; 23 J. P. 342.

The F. Improvement Act incorporated the Towns Improvement Act, 1847 (10 & 11 Vict. c. 34). By section 69 of the former Act, it was provided that no new street to be thereafter laid out, should be of less width than 40 feet, but by the general Act which came into operation in cases which were not provided for by any special Act, the extreme width of new streets intended for the use of carriages was fixed at 30 feet. A street had some years previously to 1873 been laid out with a roadway of 25 feet, but the corporation had given notice that they should enforce the clause providing for a width of 40 feet. They had recently upon the application of the defendant waived that notice and approved a carriageway of 25 feet. It was held, however, that section 69 was imperative, and that the corporation could not permit a deviation from the Act. It was also held, that though the road had been laid out previously, the corporation were not bound to interfere until the building operations were actually commenced and the width of the road definitely fixed. *Attorney-General* v. *Folkestone* (*Corporation of*), W. N. 1873, p. 127.

In 1830, A. projected the formation of a sea-side town to be built on his land, and a plan was prepared showing the sites of various proposed roads, streets, and squares. In 1833 a private Act was passed, whereby the lands described on the plan were made a distinct parish for the purposes of the Act, and commissioners were appointed in whom were vested all roads, streets, and ways, then made and used by the public, or thereafter to be made and adopted by the commissioners under the Act. Before this Act passed, A. had sold to B. several of the plots described on the plan, on which were delineated the sites of several of the proposed streets, &c. Before and after the Act numerous houses had been built, and some of the streets shown on the plan had been wholly or partially formed and adopted by the commissioners, but no houses had ever been erected on the land sold to B., which was used as agricultural

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land. In 1868 the commissioners gave B.'s devisees notice of their intention to take possession of the sites of the proposed streets, &c., and in 1871 they proceeded to take such possession. It was held, however, that they had no right to do so, there being no roads actually made for them to adopt, and the site as such not vesting in them. *Mackett* v. *Herne Bay Commissioners*, 37 L. T. (N.S.) 812.

(*c*) See the requirements of 3 & 4 Vict. c. 85, as to chimneys. By section 6 of that Act, "all withs or partitions between any chimney or flue shall be of brick or stone, and at least equal to half a brick in thickness," upon pain of forfeiting a sum of money. A subsequent local statute enacted that in the borough of H. "the chimneys and flues of every new building shall be constructed in such mode and of such materials and dimensions as shall from time to time be determined or approved by the corporation," and then if no direction should be given by the corporation as to constructing chimneys, prescribed certain directions different from those in 3 & 4 Vict. c. 85, s. 6. The appellant, within the borough of H., built a chimney which was not in accordance with the provisions of 3 & 4 Vict. c. 85, s. 6, and was convicted before justices of an offence against that Act. Held that the subsequent local statute had not repealed 3 & 4 Vict. c. 85, s. 6, within the borough of H., and that the conviction was right. *Hill* v. *Hall*, 1 Ex. D. 411; 45 L. J. M. C. 153; 35 L. T. (N.S.) 860; 41 J. P. 183.

The provision as to bye-laws relating to chimneys is new. The sub-section does not, however, refer to rooms nor to the interior of buildings beyond what may be necessary in connection with the subjects mentioned.

(*d*) As to what is a new building, see the next section and the notes thereto.

(*e*) As to the person liable to penalties for breach of bye-laws as to buildings, see *Brown* v. *Edmonton Local Board*, *post*, p. 184.

The appellant, without giving any notice or delivering any plans, erected certain structures which from their description could not be intended for residential purposes, and which were found by the justices, on a case stated, to have been erected for a temporary purpose only (the storing of tools, &c., during the erection of other buildings), and to have been intended to be pulled down by the appellant when that purpose was answered. Held that the bye-laws as to new buildings did not apply to such a structure, but that if they did they were unreasonable and bad. *Fielding* v. *Rhyl Improvement Commissioners*, 3 C. P. D. 272; 38 L. T. (N.S.) 223; 26 W. R. 881; 42 J. P. 311.

By the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 27, rule 4, every warehouse or other building used for the purposes of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls. By section 8, rule 2, no buildings shall be united, if when so united they will be in contravention of the Act. Within the limits of the Act the respondent added to a building previously erected a new building, without separating them by party walls; the addition was made by taking down one of the external walls of the old building, and then erecting the new building against the old one. The addition contained less than 216,000 cubic feet, but the two buildings taken together contained more than that quantity. It was held that the buildings had been united in contravention of the statute, and must be separated by a party wall. *Scott* v. *Legg*, 2 Ex. D. 39; 46 L. J. M. C. 117; 35 L. T. (N.S.) 487. But this decision was reversed in the Court of Appeal, on the ground that the old building was not subject to the Act, and the new one only to the extent of the addition. 10 Q. B. D. 236; 46 L. J. M. C. 267; 36 L. T. (N.S.) 456; 25 W. R. 594; 41 J. P. 773.

Therefore it would appear that bye-laws would by virtue of this proviso have the like limited application. See *Shiel* v. *Sunderland* (*Mayor of*), *post*, p. 185.

The L. Improvement Act enacted that no one should, without the previous consent of the local board, erect dwelling-houses in blocks of eight houses back to back, and that an open space should be left at the end of each block, on the land of the owner, not less than 15 feet wide, or that such houses should have

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at their front or back a space of 154 square feet. R. added two back-to-back houses to other eight which had been built before the passing of the Act by another owner of the adjacent piece of land. Held, that R. had erected a block of houses within the meaning of the enactment, and that it was immaterial whether the houses were all built by the same owner or some were built before the Act. Held also that the enactment as to open spaces was additional to and not in substitution for the first part of the section. *Robshaw* v. *Leeds* (*Mayor of*), 39 J. P. 149.

With regard to the meaning of the term party-wall when used in bye-laws, see the judgment of FRY, J., in *Watson* v. *Gray*, 14 Ch. D. 192; 49 L. J. Ch. 243; 42 L. T. (N.S.) 294; 28 W. R. 438; 44 J. P. 537; and the definition given in the Metropolitan Building Acts.

(*f*) As to the ventilation of buildings, see the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), ss. 110—115. These sections are not, however, incorporated with this Act, and are therefore applicable only when there is a local Act in force.

A bye-law was made by a town council as a local board, that wherever any open space had been left belonging to any building, it should never afterwards be built upon without consent of the council, and without having an open space of a specified size and dimensions. It was held that if it applied to old buildings it was invalid. *Tucker* v. *Rees*, 7 Jur. (N.S.) 629; 25 J. P. 789.

A local board made a bye-law that every building to be erected and used as a dwelling-house, should have an open space exclusively belonging thereto to the extent at least of 500 square feet, free from any erection thereon above the level of the ground. Held that this was a valid bye-law, and that justices might find as a fact that a small wooden fence three feet six inches high, erected round the house, was an erection within the meaning of the bye-law. *Adams* v. *Bromley Local Board*, 37 J. P. 662.

A bye-law provided that every building to be erected and used as a dwelling-house, should during such use have in the rear or at the side thereof, an open space exclusively belonging thereto to the extent of at least 150 square feet, free from any erection above the level of the ground other than a privy; but that where there was a water-closet and no other privy, an open space of not less than 100 feet might be allowed, and that the distance across such open space between every such building and the opposite property at the rear or side, exclusive of any common passage, should be 10 feet at least; if such building were two storeys in height above the level of such open space, the distance across should be 15 feet; if three storeys, 20 feet; if more than three storeys, 25 feet. Held, that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demarcation between such building and the opposite property, and that at no point should a less distance than that prescribed by the bye-law intervene between them, exclusive of any common passage. *Anderton* v. *Rigby*, 13 C. B. (N.S.) 603; S. C., *Anderton* v. *Birkenhead Improvement Commissioners*, 9 Jur. (N.S.) 1058; 32 L. J. M. C. 137.

(*g*) A toll-house erected under a local Turnpike Act, was held to be within the corresponding provisions of 11 & 12 Vict. 63, s. 53. *Tunstall Turnpike Trustees* v. *Lowndes*, 20 J. P. 374, being thus included within the term "building."

A bye-law that no dwelling-house shall be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the house, was held not to be legal. *Waite* v. *Garston Local Board*, L. R. 3 Q. B. 5; 37 L. J. M. C. 19; 17 L. T. (N.S.) 201; 16 W. R. 78; 32 J. P. 228. Per COCKBURN, C. J.: A proviso at the end of such a bye-law which leaves it in the discretion of the local board to enforce it or not, does not render it valid.

(*h*) See as to this subject, sections 46, 97, *ante*, and 31 & 32 Vict. c. 130, and amending statutes in the Appendix.

(*i*) It was held under 21 & 22 Vict. c. 98, s. 34, that a local board could not

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make a bye-law, that before beginning to dig or lay the foundation of any new building, a written notice of one month at the least should be left with the clerk at one of the monthly meetings of the board, accompanied with the plans and sections. It was also held that if a person gave notice of intention to build, and left plans and sections, he might at once commence the building subject to the right of the board to alter or pull it down if not in conformity with the bye-laws. *Hattersley* v. *Burr*, 4 H. & C. 523; 14 L. T. (N.S.) 565. This case and the previous one of *Young* v. *Edwards*, *post*, were discussed in *Hall* v. *Nixon*, L. R. 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. (N.S.) 87; 23 W. R. 612; 39 J. P. 341. There a bye-law was held to be reasonable and valid, which required every person intending to erect a new building, to give 14 days' notice, and to deliver plans and sections to the surveyor of the board, and which provided that any person erecting a new building without delivering such notice and plans, or without having the plans approved by the board, should be liable to a penalty. *Hattersley* v. *Burr* was distinguished on the ground that under the bye-law in that case, a builder might have been delayed two months. The provision for giving notice is not inconsistent with the power to pull down buildings erected in contravention of the bye-laws under a bye-law or under the next section, for the beginning to build without notice may subject the builder to a penalty, while the buildings erected in contravention of the bye-laws may be pulled down. Per QUAIN, J., in *Hall* v. *Nixon*, and see the next section.

Section 99 of a local Act provided that every house to be thereafter erected on vacant land, except corner houses, should have a back yard or other vacant ground or area of not less length than eight feet extending from the main building for the whole length of such building; and section 101 required a plan to be furnished to the local board by persons intending to build, showing the particulars required by the Act. A builder submitted a plan of four new houses having vacant ground at the side but not at the back. The board disapproved the plan as not complying with section 99, but the party commenced to build notwithstanding. It was held that whether section 99 required the vacant space to be at the back or not, the party was rightly convicted of an offence against section 101. *Pearson* v. *Kingston-upon-Hull Local Board*, 3 H. & C. 921; 35 L. J. M. C. 36; 13 L. T. (N.S.) 180; 29 J. P. 711.

(*k*) A bye-law requiring plans of new buildings and showing the position of such buildings and of adjoining buildings, was held to be legal in *Slee* v. *Bradford* (*Mayor of*), *ante*. Bye-laws made under this section may require plans of a similar kind.

(*l*) See the next section and the provisions as to expenses contained therein.

(*m*) This power is not confined to bye-laws relating to structure, but may be extended to and incorporated in bye-laws as to the giving of notices and the deposit of plans. *Baker* v. *Portsmouth* (*Mayor of*), 3 Ex. D. 157; 47 L. J. Ex. 223; 37 L. T. (N.S.) 822; 26 W. R. 303; 42 J. P. 278, affirming 3 Ex. D. 4; 37 L. T. (N.S.) 381; 25 W. R. 677.

(*n*) These words remove the ambiguity which gave rise to *Brown* v. *Holyhead Local Board*, 1 H. & C. 601; 32 L. J. Ex. 25; 7 L. T. (N.S.) 332; 11 W. R. 71; 27 J. P. 184; and *Young* v. *Edwards*, 33 L. J. M. C. 227; 11 L. T. (N.S.) 424; *Burgess* v. *Peacock*, 16 C. B. (N.S.) 624; 10 L. T. (N.S.) 617; 10 Jur. (N.S.) 803.

A bye-law made by an urban authority provided that every new street should be laid out and formed of such width and at such level as the urban authority should in each case determine. Held, reversing the decision of the Court of Appeal, that *width* in the text and in the bye-law meant width of roadway, and not width between houses on each side of the street; and that the urban authority were not entitled under the above bye-law, or any other of their existing bye-laws, to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway. *Robinson* v. *Barton Local Board*, 8 App. Cas. 798.

(*o*) This is a new provision.

Railway arches enclosed and let for being used as a stable, were held to be still buildings belonging to a railway company so as to be exempt from the provisions of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), s. 49. *Re Badger*, 8 E. & B. 728; 30 L. T. (o.s.) 285; S. C., sub. nom. *North Kent Railway Company* v. *Badger*, 27 L. J. M. C. 106; 22 J. P. 160. **Note to Sect. 157.**

See *The London and Blackwall Railway Company* v. *Limehouse Board of works*, *ante*, p. 175.

As to commencement of works and removal of works made contrary to bye-laws.

158. Where a notice plan or description of any work is required by any bye-law made by an *urban* authority (*a*) to be laid before that authority, the urban authority shall, within one *month* (*b*) after the same has been delivered or sent to their surveyor or clerk, signify in *writing* (*c*) their approval or disapproval (*d*) of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed (*e*).

Where an urban authority incur expenses in or about the removal of any work executed contrary to any bye-law, such authority may recover *in a summary manner* (*f*) the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion (*g*).

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of any bye-law shall be deemed to be *a continuing offence* (*h*), but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken.

(*a*) These words are general, and do not restrict the urban authority to bye-laws made under this Act. It appears to apply equally to bye-laws made by any previously existing authority. See section 326, *post*.

(*b*) This means a calendar month. 13 & 14 Vict. c. 21.

(*c*) This should be under the hand of the clerk of the sanitary authority.

(*d*) The disapproval will be of no avail if the builder can show that he has not disobeyed any bye-law, but it will of course be perilous to proceed until approval.

The authority must either approve or disapprove. They cannot enquire into the right or title of a person to build on the land to which his plans relate. See *Ex parte Crosby*, 41 J. P. 740.

When the local authority have assented to the erection of a building on condition of its being removed within a given time, it would seem that they have

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no power to enforce the fulfilment of such a condition unless they have taken a bond with sureties conditioned for such removal. See *Parsons* v. *Timewell*, 44 J. P. 296. This case was decided with reference to the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), ss. 45, 46.

When a local board has not within the month prescribed by this section signified its disapproval of the plans laid before it, it cannot afterwards object to the building according to the plan. *Masters* v. *Pontypool Local Board*, *ante*, p. 173. And see *Slee* v. *Bradford* (*Mayor of*), *ib.*

(*e*) There may be a provision to this effect in the bye-laws. See section 157, note (*m*), *ante*, p. 182. But notwithstanding the power given by this section, the authority may impose a penalty for breach of any of the bye-laws. See *Hall* v. *Nixon*, *ante*, p. 182.

It is to be observed that notice must be given to the person erecting the building, and an opportunity given to him to be heard before the authority can legally demolish the same. *Cooper* v. *Wandsworth District Board of Works*, 14 C. B. (N.S.) 180; 9 Jur. 1155; 32 L. J. C. P. 185; 8 L. T. (N.S.) 278; 11 W. R. 646; and see *Masters* v. *The Pontypool Local Board*, *ante*, p. 173. But see also *Cheetham* v. *Manchester* (*Mayor of*), L. R. 10 C. P. 249; 44 L. J. C. P. 139; 32 L. T. (N.S.) 28; 39 J. P. 343, where, in the case of a dangerous house notice was not required under the provisions of a local Act, the certificate of the surveyor being conclusive as to the fact of the danger.

See *Robinson* v. *Barton Local Board*, in the note to the last section.

(*f*) See section 251, *post*. This provision was contained in many bye-laws, but it does not appear that such a bye-law was legal. Hence the provisions in the text.

As to the time within which these expenses may be recovered, see the note to section 252, *post*.

(*g*) B. contracted with W., the owner of land, to erect 76 houses thereon for a certain price and on certain terms, and lodged plans with the urban authority. After erecting 59 houses, B. agreed on September 1st with C., that C. should erect the rest of the houses at a certain price, and C. in erecting the houses made the walls insufficient and not in compliance with the bye-laws. C.'s violation of the bye-laws was after September 1st, when B. had ceased to have anything to do with the buildings. Held that B. was not "the person erecting the buildings" which C. was building, and was not liable under the bye-laws which imposed a penalty for violation of rules as to thickness of walls. *Brown* v. *Edmonton Local Board*, 45 J. P. 553. But *quære* whether under such circumstances if a building were pulled down by virtue of this section, the expenses might not have been recovered from B. as the person causing the works to be executed.

(*h*) These words provide a means of meeting the decision in *Marshall* v. *Smith*, L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. (N.S.) 538; 37 J. P. 471.

See as to continuing breaches of bye-laws, section 182, *post*.

Where under a local Act it was provided that if buildings should be erected contrary to the requirements of the corporation, the corporation might make complaint thereof to a justice who was thereupon empowered to make an order directing the demolition of the building, it was held that pursuant to 11 & 12 Vict. c. 43, s. 11, the complaint must be made within six months after the completion of the building erected contrary to the provisions of the local Act. *Morant* v. *Taylor*, 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. (N.S) 139; 24 W. R. 461; 40 J. P. 501. See also *Coggins* v. *Bennett*, 2 C. P. D. 568; and compare the provisions of section 156, as explained by *Rumball* v. *Schmidt*, *ante*, p. 175.

What to be deemed

159. For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame

building of which only the framework is left down to the ground floor, or the conversion into a *dwelling-house* of any building not originally constructed for human habitation, or the conversion into more than one *dwelling-house* of a building originally constructed as one *dwelling-house* only, shall be considered the erection of a *new building*. Sect. 159. a new building.

This clause does not exhaust the definition of a new building. It only describes what shall be considered to be new buildings in particular cases. It is also to be observed that though it provides for the conversion of a house (see the definition in section 4, *ante*, p. 11) into a dwelling-house, it makes no provision for the conversion of a dwelling-house into a house for other purposes, such as a factory or hall for concerts and such entertainments. Such a conversion would not, apparently, amount to the erection of a new building within the meaning of the bye-laws; and if not, there seems to be no means of controlling or preventing it, though the premises may be altogether unfit for the purposes to which they are devoted.

The Act contains no definition of a dwelling-house. Reference may be made to the cases decided upon the term as used in the Parliamentary Registration Acts. See, for example, *Lawson* v. *Fraser*, *ante*, p. 12; *Thompson* v. *Ward*, L. R. 6 C. P. 327; 40 L. J. C. P. 169; 24 L. T. (N.S.) 679; *Boon* v. *Howard*, L. R. 9 C. P. 277; 43 L. J. C. P. 115; 29 L. T. (N.S.) 382; 22 W. R. 535.

A stable in a yard at the rear of the respondent's premises was pulled down and re-erected of smaller superficial dimensions, but somewhat higher, in another part of the same yard, the old materials, with some addition, and the boundary walls of the yard, being made use of in such re-erection. It was held that this was a new building within the corresponding provisions of 21 & 22 Vict. c. 98, s. 34. *Hobbs* v. *Dance*, L. R. 9 C. P. 30; 43 L. J. M. C. 21; 29 L. T. (N.S.) 687; 22 W. R. 90; 38 J. P. 56. In another case the proprietor of a house erected before the constitution of the local board, which had a coach-house and stable attached to it, pulled down the coach-house and stable, and erected a building partly thereon and partly on an adjoining piece of land opening into an old back street, the access to the old building being by a covered way; and it was held not to be a new building within the meaning of the Act, but only an addition to an old building. *Shiel* v. *Sunderland* (*Mayor, of*), 6 H. & N. 796; 30 L. J. M. C. 215; 25 J. P. 647. See also *Pearson* v. *Kingston-upon-Hull Local Board*, *ante*, p. 182.

160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters; that is to say, Incorporation of certain provisions of 10 & 11 Vict. c. 34.

(1.) With respect to naming the streets and numbering the houses; and

(2.) With respect to improving the line of the streets and removing obstructions; and

(3.) With respect to ruinous or dangerous buildings; and

(4.) With respect to precautions during the construction and repair of the sewers streets and houses,

shall, for the purpose of regulating such matters in *urban* districts, be incorporated with this Act (*a*).

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section,

Sect. 160. and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on *owners* (*b*) instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of *private improvement rates* under this Act (*c*).

(*a*) No. (1) includes sections 64, 65; No. (2), sections 66–74; No. (3), sections 75–78; No. (4), sections 79–83. All these sections are set out in the Appendix. As to the effect of such an incorporation of a statute, see the cases cited in note (*b*) to section 57, *ante*, p. 67.

With regard to some of these subjects, special provisions will be found in the Act, and it will be important to ascertain whether these provisions in any respect conflict with those in the incorporated Act. Where that may be the case, the present statute should afford the rule to guide, as containing the latest legislation on the particular subject.

(*b*) See the definition in section 4, *ante*, p. 6. And as to the authentication and service of notices, see sections 266, 267, *post*.

(*c*) See section 213, *post*. As to the effect of special covenants and agreements between lessor and lessee, see section 226, *post*, but *quære*, whether that section applies to the text.

Lighting Streets, &c.

Powers of urban authority for lighting their district. 12 & 13 Vict. c. 94, s. 8.

161. Any *urban* authority may contract (*a*) with any *person* (*b*) for the supply of gas, or other means of lighting the streets markets and public buildings *in their district* (*c*), and may provide such lamps lamp posts and other materials and apparatus as they may think necessary for lighting the same.

Where there is not any company or *person* (*b*) (other than the urban authority) authorized by or in pursuance of any Act of Parliament, or any order confirmed by Parliament (*d*), to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority *may* (*e*) themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority *may* themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a

provisional order (*f*) authorizing a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870 (*g*), and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the *Local Government Board* shall throughout the said Act be deemed to be substituted for the *Board of Trade*. Sect. 161.

(*a*) See section 173, *post*, as to the regulations regarding contracts.

(*b*) See the definition in section 4, *ante*, p. 5.

(*c*) It must be noticed that this power is limited to the district of the authority. A contract extending to any place outside the district would be *ultra vires*.

(*d*) See section 52, note (*b*), *ante*, p. 63. There is no reference here to personal pecuniary profit.

(*e*) This is only an enabling power. There is no compulsion upon the urban authority to undertake these works, but they are not to set up gasworks to compete with companies or other bodies acting under statutory powers.

(*f*) See section 297, *post*. It is not absolutely necessary for the urban authority to procure a provisional order to enable them to set up gasworks, but they would have none of the powers which are given by the general statutes for such works unless they procured such an order. Whether, if they acquire the undertaking of a company established under a private Act, they can without such order avail themselves of all the powers of such Act is open to doubt. See *Richmond Waterworks Company* v. *The Vestry of Richmond*, *ante*, p. 64.

(*g*) 33 & 34 Vict. c. 70, amended by 36 & 37 Vict. c. 89. See also 38 & 39 Vict. c. 86, s. 4, as to breaches of contract by persons employed in supply of gas or water. The first of these Acts incorporates the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), which was amended by 34 & 35 Vict. c. 41. All these Acts are set out in the Appendix.

Power for sale of undertaking of gas company to urban authority.

162. For the purpose of supplying gas *within their district* or any part thereof either for public or private purposes any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company (*a*), in pursuance, in the case of a company registered under the Companies Act, 1862 (*b*), of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

(*a*) It has been observed that this section is confined to companies. As

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regards private individuals who may be owners of such works, no provision seems to be requisite. But the section does not in terms apply to public commissioners or trustees holding gasworks.

See note (*c*) on section 154, *ante*, p. 171, as to obtaining the sanction of the Local Government Board. The provisions which enable the authority to borrow money for the purchase will be found in Part VI., section 233, *post*.

(*b*) *i.e.*, 25 & 26 Vict. c. 89, s. 51.

Watching and Lighting Act (3 & 4 Will. 4, c. 90) to be superseded by this Act.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment (*a*) the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of His Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be *superseded* (*b*) by this Act, and all lamps lamp posts gas pipes fire engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

(*a*) This appears to refer to sections 272 and 276, *post*.

(*b*) This unusual word is introduced from 21 & 22 Vict. c. 98, s. 46. It is not the same as *repealed*, and therefore so much of 3 & 4 Will. 4, c. 90, as relates to watching is not, as it seems, affected by the above section, as no provision for watching is included in this Act.

Public Pleasure Grounds, &c.

Urban authority may provide places of public recreation.

164. Any *urban* authority may purchase (*a*) or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds (*b*), and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever (*c*).

Any urban authority may make *bye-laws* for the regulation of any such public walk or pleasure ground, and may by such bye-laws provide for the *removal* from such public walk or pleasure ground of any person infringing any such bye-law by any officer of the urban authority or constable (*d*).

(*a*) For the sections of this Act relating to the purchases of land, see sections 175, 176, *post*.

(*b*) Where, by an Act of Parliament, a corporation was directed to cause a piece of land to be drained and levelled, and kept in a proper condition for the purpose of public recreation, the court restrained the corporation by injunction from permitting a cattle fair to be held in such piece of ground. *Attorney-General* v. *Southampton* (*Mayor of*), 1 Giff. 363; 6 Jur. (N.S.) 36;

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29 L. J. Ch. 282; 1 L. T. (N.S.) 155. In another case a municipal corporation purchased a piece of land under the corresponding provisions of 11 & 12 Vict. c. 63, s. 74. In 1875 the corporation determined to appropriate about a quarter of an acre at one extremity of the piece of land as a site for the erection of town buildings and of a museum, public library, school of art, and conservatory. It was held by BACON, V. C., that no portion of the land could be appropriated for any of these objects except the museum and conservatory. But it was held, on appeal, that the erection of a free library was also allowable, as being conducive to the better enjoyment of the public walks and grounds as such. *Attorney-General* v. *Sunderland* (*Corporation of*), 2 Ch. D. 634; 45 L. J. Ch. 839; 34 L. T. (N.S.) 921; 24 W. R. 991; 40 J. P. 564.

(*c*) A gift, devise, or bequest for the providing of a public park, &c., is exempted from the operation of the Mortmain Act by 34 & 35 Vict. c. 13. Purchases of land for the purposes of this section are exempt by virtue of section 7, *ante*, p. 19.

The Acts which relate to the providing of public parks and recreation grounds are 10 & 11 Vict. c. 34, s. 135; 22 Vict. c. 27; 23 & 24 Vict. c. 30. 26 & 27 Vict. c. 13, provides for the protection of gardens and ornamental grounds, as to which see also 24 & 25 Vict. c. 96, s. 31.

26 Vict. c. 13, s. 1, provides that, when in any city or borough any enclosed garden or ornamental ground has been set apart, otherwise than by the revocable permission of the owner thereof in any public square, &c., for the use or enjoyment of the inhabitants thereof, and when the trustees or other body appointed for the care of the same have neglected to keep it in proper order, or when such garden or ground has not been vested or placed in the management of trustees, &c., for the care of the same, and from want of such care or any other cause has been neglected, the corporate authorities shall take charge of the same, putting up a notice to that effect in such garden or ground. As to the meaning of the words "otherwise than by the revocable permission of the owner," see *Tulk* v. *The Metropolitan Board of Works*, L. R. 3 Q. B. 94, 682; 37 L. J. Q. B. 272; 16 W. R. 985; 19 L. T. (N.S.) 18; 32 J. P. 548.

See also the provisions of the Inclosures Acts as to allotments for recreation and other public purposes, 8 & 9 Vict. c. 118; 39 & 40 Vict. c. 56; 42 & 43 Vict. c. 37; 45 Vict. c. 15, s. 3.

As to the metropolis, see 18 & 19 Vict. c. 120, s. 114; 19 & 20 Vict. c. 112, ss. 10, 11; 26 & 27 Vict. c. 13; 29 & 30 Vict. c. 122; 32 & 33 Vict. c. 107; 40 & 41 Vict. c. 35; 41 & 42 Vict. c. 37, ss. 8, 9; 42 & 43 Vict. c. 59, ss. 4, 5, 11; 43 & 44 Vict. c. 25, ss. 3, 5, 6; 44 & 45 Vict. c. 34.

A faculty cannot be granted authorizing a churchyard to be appropriated as a public garden. But it was held to be in the discretion of the Consistory Court to authorize by a faculty the construction of footpaths in it for the convenience of the parishioners, the removal of high walls which obstruct the free circulation of air, the planting of it with trees and flowers when it is closed for burials, and the erection of gates in order to give the parishioners access to it, and other minor alterations. *Re St. George-in-the-East*, 1 P. D. 311. As to the power of urban authorities to repair fences surrounding burial grounds, see 24 & 25 Vict. c. 61, s. 21, re-enacted in Schedule V., *post*.

The statutes which provided for the procuring of public libraries and public museums, 8 & 9 Vict. c. 43, and 13 & 14 Vict. c. 35, have been repealed and superseded by 18 & 19 Vict. c. 70, intituled "An Act for further promoting the establishment of Public Libraries and Museums in Municipal Towns, and for extending it to Towns governed under Local Improvement Acts, and to Parishes," which has since been amended by 29 & 30 Vict. c. 114; 34 & 35 Vict. c. 71; and 40 & 41 Vict. c. 54. These are printed in the Appendix. These Acts also enable schools of science and art to be established.

24 & 25 Vict. c. 27, s. 39, renders persons who wilfully injure works of art, monuments, or statues in public streets punishable as a misdemeanor.

(*d*) As to the making, confirming, and publishing of bye-laws, see sections 182–9, *post*; and as to the enforcing them, see section 251, *post*. The section

Note to Sect. 164. in the text gives a power not previously enjoyed—namely, one for the removal of persons offending against the bye-laws. It is necessary that the grounds should be actually vested in the authority before they make bye-laws, and the Local Government Board have declined to confirm bye-laws unless the grounds are so vested. Model bye-laws have been issued under this section.

By a scheme made under the Metropolitan Commons Act, 1866, and confirmed by the Metropolitan Commons Supplemental Act, 1877, it was provided that a common should be dedicated to the use and recreation of the public as an open and unenclosed space for ever, and the Metropolitan Board of Works were empowered to frame bye-laws and regulations for the prevention of nuisances and the preservation of order on the common. The board made a bye-law prohibiting the delivery of any public speech, lecture, sermon, or address of any kind, except with the written permission of the board first obtained, and upon such portions of the common, and at such times as might be by such written permission directed and sanctioned by the board. Held, that such bye-law was valid. No right of the general public to hold meetings on a common is known to the law. *De Morgan* v. *Metropolitan Board of Works*, 5 Q. B. D. 155; 49 L. J. M. C. 51; 42 L. T. (N.S.) 238; 28 W. R. 489; 44 J. P. 296. A bye-law relating to a common provided that "no person shall shoot or chase game or other birds or animals on the common." The respondent carried a tame pigeon and a falcon, and, when on the common, let them both go, and ran after them for half a mile watching the chase. Held, that this was an offence within the meaning of the bye-law. *Harper* v. *Mitchell*, 44 J. P. 378.

Under the section in the text a local board made bye-laws for the regulation of a pleasure ground within their jurisdiction. One bye-law provided that no person should suffer any fowl belonging to him to enter or remain in the pleasure ground. The fine for offending was £5. B.'s six fowls strayed inside, there being no fence sufficient to prevent them. Held, that the justices were right in refusing to convict, as the bye-law was repugnant to the law of England, and was not warranted by the section. *Torquay Local Board* v. *Bridle*, 47 J. P. 183.

Urban authority may provide public clocks.

165. Any *urban* authority may from time to time *provide* such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

It has been considered that this section does not empower the urban authority to repair or restore clocks not *provided* by themselves and not transferred to them, such as the clock of a parish church. Whether they can affix a public clock to a church as a public building is a matter of doubt. Perhaps they could do it with a faculty from an ecclesiastical court; otherwise it would seem that they cannot.

10 & 11 Vict. c. 34, s. 143, contains a similar provision as to clocks.

Markets and Slaughter-houses.

Urban authority may

166. Where an urban authority are a *local board* or *improvement commissioners* they shall have power, with the consent of the *owners* and ratepayers of their district, expressed by resolution passed in

manner provided by Schedule III. to this Act, and where the urban authority are a *town council* they shall have power, with the consent of *two-thirds* of their number, to do the following things, or any of them, *within their district* (*a*): Sect. 166. provide markets.

To *provide* (*b*) a market place, and construct a market house and other conveniences, for the purpose of holding markets:

To provide houses and places for weighing carts:

To make convenient approaches to such market:

To provide all such matters and things as may be necessary for the convenient use of such market:

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes:

To take stallages rents and tolls (*c*) in respect of the use by any person of such market:

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges (*d*) enjoyed *within the district* (*e*) by any person (*f*) without his consent.

(*a*) For the definition of *local board*, see section 4, *ante*, p. 3; of improvement commissioners, section 4, *ante*, p. 4; of *owners*, section 4, *ante*, p. 6.

It will be seen that there is no compulsion upon a local board to act, notwithstanding the resolution of their constituents; and that there must be, in the case of a town council, the consent of two-thirds of all the members of the board, not of that of a meeting.

It must be noticed that there is only power to establish a *market*. No power is given to establish a *fair*, which is not now favoured by public opinion. It must also be noticed that the market place is to be within the district of the urban authority.

(*b*) Sections 175, 176, *post*, contain the powers which enable the authority to provide these places, houses and approaches, compulsorily if necessary.

B. being entitled to a market on the manor of K., which was held in the public street on B.'s soil, removed it to another site in K., which site he had demised without demising the franchise, for a term of years. Per LITTLEDALE, J.: The removal was bad, because the lord of the market ought to be the owner of the soil on which the market is held. By all the court: The removal was at any rate bad, unless the public had the same privilege in the new market as in the old; and, therefore, it appearing that no toll had ever been taken in the old market, but that the lease, after a covenant by the lessees to allow the soil to be used solely for the market, empowered him to impose rents for the liberty of selling in the market, the court held that the removal was bad, and that the site of the old market might be used on market days as it was before the removal. *R.* v. *Starkey*, 7 A. & E. 95; 6 L. J. K. B. 202.

Where the lord of a manor proved a market to have been immemorially holden in certain places within a manor it was held not to be a necessary inference (no grant being produced) that the market was granted to be holden in those places only, and that the jury might presume from circumstances that the market was granted to be holden in any convenient place within the manor. *De Rutzen* v. *Lloyd*, 5 A. & E. 456; 5 L. J. K. B. 202. And see *Wortley* v. *Nottingham Local Board*, 21 L. T. (N.S.) 582; 33 J. P. 806, where it was held that a corporation might remove part of a market to any other convenient place within the limits specified in the original grant. A corporation, being lords of a market and owners of the soil, are entitled at common law to remove

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a market. But where acting as a local board they take steps under the Act to set up a market in a new place, they can only act under the powers and subject to the provisos of the statute and are not entitled to fall back on their common law right. Per PAGE WOOD, V. C., in *Ellis* v. *Bridgnorth* (*Corporation of*), 2 J. & H. 67; 4 L. T. (N.S.) 112. In the same case, when tried at common law, it appeared that the corporation had removed the market from the place at which it had been immemorially claimed. It was held that the occupiers of houses adjoining the old market place might maintain an action for disturbance of those rights which they had hitherto enjoyed of erecting stalls opposite their houses on market days. It was held also that under the corresponding provisions of 21 & 22 Vict. c. 98, s. 50, the removal of the market was not justifiable, inasmuch as the power to provide market places conferred by that section was expressly qualified by the proviso as to the rights of individuals. 15 C. B. (N.S.) 52; 32 L. J. C. P. 273; 8 L. T. (N.S.) 658; 12 W. R. 56. But where a local Act imposed a penalty for exposing for sale meat, &c., in the streets of a town, so that such meat, &c., projected over any footway, &c., with an exception in favour of stalls in such parts of the streets as had been theretofore used for that purpose at the times of the usual market, and subsequently the local board made bye-laws appointing certain places for markets for certain descriptions of goods on market days, it was held that the provisions of the local Act did not exempt from liability to penalties a person who violated the bye-laws by exposing for sale meat, &c., at a place other than that appointed by the board, notwithstanding that the place had for many years been used for such sales by such persons and others. *Savage* v. *Brook*, 15 C. B. (N.S.) 264; 33 L. J. M. C. 42; 9 L. T. (N.S.) 334.

As to enlarging a market under a local Act, see *Attorney-General* v. *Cambridge* (*Mayor, &c., of*), L. R. 6 H. L. 303.

Under the powers of an Act of 1844 the Corporation of Manchester purchased the manorial rights of the manor of Manchester, which was co-extensive with one of the six townships included in the borough. Among these rights was an ancient franchise to hold a market which appeared to have been a Saturday market. After this, by the Manchester Market Act, 1856, the corporation were empowered to hold markets on such days as they should think fit, at any places within the borough which they should appropriate as market places, and to charge any tolls, not exceeding those mentioned in the schedule to the Act (which were higher than the old accustomed tolls), and to make certain charges for weighing, which could not have been made under the old franchise. It was held that there being under the Act a change of time, a change of place, an alteration of old charges, an imposition of new charges, and an extension of the market from the township to the borough, the effect of the Act was to give the corporation new rights of holding markets in substitution for the old franchise, and that the old franchise was extinguished. *Manchester* (*Mayor of*), v. *Lyons*, 22 Ch. D. 287; 47 L. T. (N.S.) 677. It may be inferred from the judgment in this case that an action for disturbance of a market created by virtue of a statute will be as in the case of an ancient market franchise. The corporation had brought an action to restrain the defendants from selling eggs and dried fish on market days in their shop. The shop was situate in a street which adjoined one side of one of the plaintiff's markets, and on the opposite side of the street from, but not opposite to the entrance from that street into the market. The defendants only sold their own goods in their shops in the ordinary course of business. It was held that this was no disturbance of the statutory right of market.

The plaintiffs were down to 1855 seised in fee of an ancient market for the sale of cattle, known as Smithfield market, and were entitled to certain tolls in respect of cattle exposed for sale in the market. In 1855 the Smithfield Market was by Act of Parliament removed to Islington; but all privileges were expressly preserved to the plaintiffs, and it was enacted that no new market for the sale of cattle should be opened within a distance of seven miles from St. Paul's Cathedral. One of the defendants became, in 1854, lessee

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of certain premises about 600 yards distant from the Islington market and within the distance of seven miles from St. Paul's, and converted them into lairs and receptacles for cattle containing accommodation for about 400 head. Some of the cattle were from time to time sold by the defendants upon the premises between the market days, which were held on Mondays and Thursdays. Beyond a uniform charge for lairage, there was nothing in the nature of a toll upon sales effected by other persons than the defendants; but when the defendants themselves acted as salesmen they charged the same commission as if the cattle had been sold in the plaintiff's market. The cattle thus sold in the interval between the two markets would, if there had been no opportunity for sale between the two markets, have found their way to, and have been sold in the plaintiff's market. Held, on these facts, that an action was maintainable against the defendants for a disturbance of the plaintiff's market. *London (Mayor, &c., of)* v. *Low*, 49 L. J. Q. B. 144; 42 L. T. (N.S.) 16; 28 W. R. 250; 44 J. P. 169.

In boroughs, the limits of which for the purposes of parliamentary representation have been fixed by 2 & 3 Will. 4. c. 64, s. 35, sched. O., and which are included in section 1 of schedules A. and B. to the 5 & 6 Will. 4, c. 76, s. 7, all places within the limits so fixed are, by section 8 of the latter Act, parts of the borough for all purposes; and an ancient borough market may be lawfully held within such limits, although outside the limits of the old municipal borough. A market held in the same town with an old market, if held upon the same day, is a disturbance by intendment of law; but if it is held on a different day it is only evidence of disturbance for the jury. To support an action for disturbance of a market it is not necessary that the defendant should have actually sold; any active interference by him in the conduct of the new market, or participation in its profits or risk, is sufficient. *Dorchester (Mayor, &c., of)* v. *Ensor*, L. R. 4 Ex. 335; 39 L. J. Ex. 11; 21 L. T. 145; 34 J. P. 167. A market on Monday is *primâ facie* an injury to a market on Thursday. As to the granting of an interlocutory injunction in such a case, see *Elwes* v. *Payne*, 12 Ch. D. 468; 48 L. J. Ch. 831; 41 L. T. (N.S.) 118; 27 W. R. 704.

In addition to the above cases as to the right of action for disturbance of a market, the following cases may be referred to: *Prince* v. *Lewis*, 5 B. & C. 363; 2 C. & P. 66; *In re Islington Market Bill*, 3 C. & F. 513; *Holcroft* v. *Heel*, 1 B. & P. 400; *Mosley* v. *Chadwick*, 7 B. & C. 47, *n.*; 3 Doug. 117; *Manchester (Mayor of)* v. *Pedley*, 4 B. & Ad. 397; *Brecon (Mayor of)* v. *Edwards*, 1 H. & C. 51; 8 Jur. (N.S.) 461; 31 L. J. Ex. 368; 6 L. T. (N.S.) 293; 26 J. P. 614; *Goldsmid* v. *The Great Eastern Railway Company*, 47 L. T. (N.S.) 727; affirmed in C. A., 32 W. R. 341; *Bridgland* v. *Shapter*, 5 M. & W. 375; *Yard* v. *Ford*, 2 Wm. Saund. 171.

(*c*) See the next section, note (*d*).

With regard to the liability of a corporation as owners of a market, the following case may be referred to:—

The defendants (a corporation) were owners of a cattle market, and in the market place they had erected a statue round which they had placed a railing as a fence. The plaintiffs attended the market with their cattle, and occupied a particular site for which they paid a toll. A cow belonging to them, in attempting to jump the railing, injured herself and subsequently died from the injuries. The jury found that the railing was dangerous. Held, that the defendants having received tolls from the plaintiffs and invited them to come to the market with their cattle, a duty was imposed on them to keep the market in a safe condition, and therefore an action would lie against the defendants for the loss sustained by the plaintiffs. *Lax* v. *Darlington (Mayor, &c., of)*, 5 Ex. D. 28; 49 L. J. Q. B. 105; 41 L. T. (N.S.) 489; 28 W. R. 221; 44 J. P. 312.

(*d*) The right referred to in the text means a right acquired adversely to the world and peculiar to the individual. The establishment of a business with the consent of a local board does not give a right, power, or privilege within the meaning of this proviso, if the business consists of sales which are contrary to section 13 of the Incorporated Markets and Fairs Act (*vide* Appendix),

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as not being within the person's own shop within the meaning of that section. *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170; 27 L. T. (N.S.) 33; 36 J. P. 804.

(*e*) The rights of any person in respect of a market out of the district, however near it may be, are not referred to. There may arise a question whether those rights can be infringed by the urban authority, but apparently this section will justify them in exercising all the powers granted by the section notwithstanding that injury may arise outside their district.

(*f*) See the definition of this word in section 4, *ante*, p. 5.

Incorporation of provisions of 11 & 12 Vict. c. 14, as to markets.

167. For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847 (*a*), in so far as the same relate to *markets*; that is to say,

With respect to the holding of the market *or fair*, and the protection thereof (*b*); and

With respect to the weighing goods and carts (*c*); and

With respect to the stallages rents and tolls (*d*):

Provided that all tolls leviable by an urban authority in pursuance of *this section* (*e*) shall be approved by the Local Government Board.

An urban authority may with respect to any market belonging to them make *bye-laws* (*f*) for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate *to markets*, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market (*g*).

(*a*) That is, 10 & 11 Vict. c. 14. See the clauses in the Appendix, and the notes thereon. The references in this section are to the headings in that statute, and do not lead to any inference as to the power to hold a *fair*.

(*b*) Sections 12 to 16. It may be here observed that 27 Hen. 6, c. 5, prohibited markets from being held on Sundays, Ascension Day, Corpus Christi Day, Assumption Day, All Saints Day, and Good Friday, and this prohibition has not been removed.

(*c*) Sections 21 to 38.

(*d*) Sections 31 to 41.

(*e*) This should have been the last section (*i.e.*, section 166). The meaning of this proviso appears to be that the *tolls* proposed to be levied by the urban authority shall be submitted to the Local Government Board for approval, and when the approval shall have been obtained, but not before, they shall be leviable.

Tolls are levied on the sale of articles, and on the weighing and measuring of goods, and on the weighing of carts.

It must be observed that no approval is required for the *rents* and *stallages*. These are in fact matters for special bargains. No one need rent the stalls or places in the market; but all persons having goods for sale must frequent the market, and they as well as the buyers must be protected from unreasonable tolls.

As to the distinction between tolls and stallages, see *Northampton* (*Mayor of*) v. *Ward*, 2 Stra. 1238; and *Swindon Central Market Company, Limited*, v. *Panting*, 27 L. T. (N.S.) 578. Stallage is a payment due to the owner of a market, in respect of the exclusive occupation of a portion of the soil. There-

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fore when a person used a market with a chair and a *ped*, that is a wooden or wicker basket, 4 feet long, 2½ feet wide, and 2 feet high, with a lid, which being turned back and supported by pieces of wood *not fixed in the soil*, formed a table on which he exposed provisions for sale, it was held he was liable for stallage. *Yarmouth (Mayor, &c., of)* v. *Groom*, 1 H. & C. 102; 32 L. J. Ex. 74; 7 L. T. (N.S.) 161; 8 Jur. (N.S.) 677; see also *Reg.* v. *Caswell*, L. R. 7 Q. B. 328; 41 L. J. M. C. 108; 26 L. T. (N.S.) 574; 20 W. R. 624; 36 J. P. 645.

(*f*) See as to the making, confirming and publishing of bye-laws, sections 182—5, *post*. There is an addition in this section to the provisions as to publication. Section 251, *post*, provides for the enforcing of the bye-laws. It will be observed that there is no reference here to *fairs*.

(*g*) See in section 306, *post*, the penalty for injuring or defacing the boards on which the bye-laws are inscribed.

Power for sale of undertaking of market company to urban authority.

168. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act, 1862 (*a*), of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of *three-fourths* (*b*) in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell (*c*) and transfer to any *urban* authority, on such terms as may be agreed on between the company and the urban authority, all the rights *powers* (*d*) and privileges and all or any of the markets premises and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase.

(*a*) That is, 25 & 26 Vict. c. 89. This section does not refer to a company established under a local Act.

(*b*) In 21 & 22 Vict. c. 98, s. 53, it was three-fifths.

(*c*) This power of sale, as it seems, overrides any provisions which may be contained in any local Act applicable to the markets which provided for the sale of it. A similar provision is contained in section 63, *ante*, p. 72, as to water, and in section 162, *ante*, p. 187, as to gas, except that the sanction of the Local Government Board is not required for the purchase of the market. But if a loan be required for effecting the purchase, as that board must sanction the loan their approbation of the purchase must be obtained.

(*d*) *Quære*, will this word carry all special statutory powers which are independent of the property in the market? The affirmative appears to be the better opinion.

Power to provide slaughter-houses.

169. Any urban authority may, *if they think fit*, provide slaughter-houses (*a*), and they shall make *bye-laws* (*b*) with respect to the *management* (*c*) and charges for the use of any slaughter-houses so provided.

For the purposes of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns

Sect. 169. Improvement Clauses Act, 1847 (*d*), with respect to *slaughter-houses* shall be incorporated with this Act.

Nothing in this section shall prejudice or affect any rights, powers, or privileges, of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848 (*e*), for the purpose of making and maintaining slaughter-houses.

(*a*) For the definition of a slaughter-house, see section 4, *ante*, p. 13.
(*b*) See note (*f*), to section 167, *ante*, p. 195.
(*c*) This term is somewhat vague but is comprehensive.
(*d*) That is, 10 & 11 Vict. c. 34. Sections 125—131, which are here incorporated, are printed in the Appendix, where the notes require attention.
See as to slaughter-houses in the metropolis, 25 & 26 Vict. c. 102, ss. 93, 94, and 37 & 38 Vict. c. 67.
Slaughter-houses for horses and other cattle not required for butchers' meat, are regulated by 26 Geo. 3, c. 71, which refers to the prevention of horse-stealing, and 7 & 8 Vict. c. 87, and 12 & 13 Vict. c. 92, which refer principally to the prevention of cruelty to animals.
The Markets and Fairs Clauses Act, 1847, 10 & 11 Vict. c. 14, ss. 17—20, contains provisions relating to slaughter-houses, but these apply only by virtue of a special Act. They are incorporated so far as regards a local authority under the Contagious Diseases (Animals) Act, 1878, which enables such authority to provide landing places, &c., for the sale, slaughter, or disposal of foreign animals (41 & 42 Vict. c. 74, s. 39).
(*e*) That is, before 11 & 12 Vict. c. 63.

Notice to be affixed on slaughter-houses.

170. The owner or occupier of any slaughter-house *licensed or registered* (*a*) *under this Act* shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding *five pounds* for every such offence, and of ten shillings for every day during which such offence continues after conviction (*b*).

(*a*) The sections incorporated from 10 & 11 Vict. c. 34, enable the urban authority to license slaughter-houses newly established, and to register those which have been previously established. It is true that this section would appear to take effect from the present time, but the same provision was contained in 37 & 38 Vict. c. 89, s. 49. It cannot, however, operate upon premises licensed or registered before this last Act.
(*b*) As to the recovery of this penalty, see section 251, *post*.

Police Regulations.

Incorporation of

171. The provisions of the Towns Police Clauses Act, 1847 (*a*), with respect to the following matters (namely),

(1.) With respect to obstructions and nuisances in the streets; and
(2.) With respect to fires (*b*); and
(3.) With respect to places of public resort; and
(4.) With respect to hackney carriages; and
(5.) With respect to public bathing;

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

Sect. 171. certain provisions of 10 & 11 Vict. c. 89.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority; and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district (*c*).

Notwithstanding anything in the provisions so incorporated (*d*), a license granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the license, or until the next general licensing meeting where a day for such meeting is appointed (*e*).

(*a*) That is, 10 & 11 Vict. c. 89. By section 4, it is provided that by the use of these words, the clauses of that Act applicable to the particular subject shall be incorporated, but in order to understand the incorporated clauses attention should be paid to other clauses in the Act, and consequently such as appear to be requisite are printed in addition to the clauses actually incorporated. It will be found that in the Appendix No. (1) includes sections 21—9, No. (2) sections 30—3, No. (3) sections 34—6, No. (4) sections 37—68, and No. (5) section 69. The notes on these sections in the Appendix should be referred to.

(*b*) See section 157, *ante*, p. 176, as to bye-laws respecting buildings, and section 66, *ante*, p. 75, as to the providing of fire-plugs and the prevention of fires.

(*c*) The last interpretation removes a difficulty which has often been felt in respect of "the prescribed distance" in local government districts where there is no prescribed distance, and also prevents the inconvenience resulting from the contiguity of local districts.

(*d*) This enactment removes an impression which prevailed generally, though whether correctly or not may be doubted, that though the owner of a carriage was to be licensed for a year only, the driver when once licensed retained his license during the rest of his life.

(*e*) It will be seen that the incorporated clauses enable bye-laws to be made in respect of hackney carriages and public bathing; and the Local Government Board have issued model bye-laws on these subjects. The subjects of such bye-laws and the decisions upon them appear in the Appendix, where the enactments are printed.

172. Any urban authority may license the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire Urban authority

Sect. 172. within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages (*a*), and may make bye-laws (*b*) for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge (*c*).

may make bye-laws for licensing horses, boats, &c. for hire.

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make bye-laws (*b*) for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge (*d*).

(*a*) For these, see 10 & 11 Vict. c. 89, ss. 37—68, in the Appendix.

(*b*) As to the making, confirming, and publishing of bye-laws, see sections 182—6, *post*, and as to the enforcing of them, see section 251, *post*.

(*c*) Model bye-laws under this section have been issued. From the memorandum prefixed to these, the following practical remarks are taken:—"It should be noticed that the effect of sections 46 and 47 of 10 & 11 Vict. c. 89, as applied to the case of a driver or conductor of a horse, pony, mule, or ass standing for hire, is to require every such conductor to obtain a license from the urban authority, and to render liable to a penalty any person who acts as a driver or conductor without having obtained such license or during the time that his license is suspended, or who lends or parts with his license except to the proprietor of the horse, pony, mule, or ass. The proprietor will also be liable to a penalty if he employ any person as a driver or conductor who has not obtained a license, or during the time that his license is suspended. It will be in the discretion of the urban authority to grant or refuse a license; and before deciding upon any application they will doubtless satisfy themselves as to the qualification of the applicant for employment as a driver or conductor. A license from the urban authority is a qualification which the statutory provisions above noticed recognize as indispensable in the case of every person who acts as a driver or conductor."

(*d*) Model bye-laws have also been issued with reference to pleasure boats and vessels. The memorandum attached to this series is deserving of careful perusal, but it is too long for insertion here. It is there pointed out that there is not in the text any express provision as to the conditions under which a license may be granted or refused or as to its duration or revocation. These are said to be matters as to which the urban authority may adopt such rules as they may deem most expedient. Certain requirements are indicated which ought to be regarded as indispensable, such as the soundness and stability of the boat or vessel, &c., and the power to revoke the license on notice.

The vessels referred to in the text appear to be vessels used for pleasure, *e. g.*, a yacht, and are not, it is presumed, such as are used for passage or traffic, which are to be dealt with under the Mercantile Marine Acts, where the Board of Trade provides for the qualification of the officers.

PART V.

GENERAL PROVISIONS.

Contracts.

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173. Any local authority may enter into any contracts necessary for carrying this Act into execution.

Power of local authorities to contract.

174. With respect to contracts made by an *urban* (*a*) authority under this Act, the following regulations shall be observed; (namely),

Provisions to contracts by urban authority.

(1.) Every contract made by an urban authority whereof the value or amount exceeds *fifty pounds* (*b*) *shall* be in writing and sealed with the common seal of such authority (*c*):

(2.) Every such contract shall specify the work, materials, matters, or things, to be furnished had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed (*d*).

(3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise (*e*).

(4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority

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shall require and take sufficient security for the due performance of the same (*f*).

(5.) Every contract entered into by an urban authority in conformity with the provisions of this section, *and* duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes: Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

(*a*) It is to be observed that this section applies only to contracts by urban authorities. Contracts with guardians are regulated by the ordinary law relating to corporate bodies. The law upon the subject is thus stated by Lord COLERIDGE, C. J., in *Austin* v. *The Guardians of Bethnal Green*, L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. (N.S.) 807; 22 W. R. 406; 38 J. P. 248: "The rule of law is clear, that *primâ facie* and for general purposes a corporation can only contract under seal, for the proper legal mode of authenticating the act of a corporation is by means of its seal. On this rule, however, certain exceptions have been grafted. The principle that governs these exceptions is conveniently stated in the case of *Church* v. *Imperial Gas Light Company* (6 A. & E. 846, at p. 861), by the Court of Queen's Bench, which statement is adopted by the Court of Exchequer in the case of *Mayor of Ludlow* v. *Charlton* (6 M. & W. 815, at p. 822). It is there stated that wherever to hold the rule applicable would occasion very great inconvenience or tend to defeat the very object for which the corporation was created, the exception has prevailed; hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions." All the decided cases can be explained with reference to this principle. Thus it was held that the guardians of a union could not bind themselves by an order not under seal, for making a survey and map of the rateable property in a parish, such order not being a contract necessarily incident to the purposes for which they were incorporated. *Paine* v. *Strand Union* (*Guardians of*), 8 Q. B. 326; 15 L. J. M. C. 89; 10 Jur. 308. But where guardians gave a verbal order for iron gates for the workhouse, and the gates were supplied, it was held that there was a contract incident to the purposes for which they were incorporated. *Saunders* v. *St. Neots Union* (*Guardians of*), 8 Q. B. 810; 15 L. J. M. C. 104; 10 Jur. 566. *Paine* v. *Strand Union* was followed in *Lamprell* v. *Billericay Union*, 3 Ex. 283; 18 L. J. Ex. 282. There it was held that a builder who had erected works in addition to those specified in a sealed contract was not entitled to recover on a *quantum meruit*, as the defendants were incapable of making a new parol contract of that description. But when at a meeting of guardians a contract not under seal was entered into for the erecting of water-closets in the workhouse and the closets were put up, it was held that the guardians were liable. *Clarke* v. *Cuckfield Union* (*Guardians of*), 16 Jur. 686; 21 L. J. Q. B. 349. And when guardians suspecting fraud by their clerk in the union accounts, employed the plaintiff to investigate them, and during the investiga-

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tion, and after the appointment of a new clerk, also employed the plaintiff to make up the union accounts for the last half-year, which involved a fresh investigation by him of the old accounts; and the plaintiff was employed under three several resolutions of the board entered in their minute book, but no contract was made under the seal of the board; it was held that as the work done was incidental and necessary to the purposes for which the board was created, he was entitled to recover. *Haigh* v. *Bierley Union* (*Guardians of*), E. B. & E. 873; 5 Jur. (N.S.) 511; 28 L. J. Q. B. 62; 6 W. R. 679; 31 L. T. (O.S.) 213; 23 J. P. 195. So a plaintiff was held entitled to recover the price of coals supplied to a workhouse under a parol contract. *Nicholson* v. *Bradfield Union* (*Guardians of*), L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 14 W. R. 731; 14 L. T. (N.S.) 830; 30 J. P. 549. The court in this case followed *Clarke* v. *Cuckfield Union* (*supra*). But the appointment of a medical officer was held not to come within the exceptions to the general principle that a seal is necessary. *Dyte* v. *St. Pancras* (*Guardians of*), 27 L. T. (N.S.) 342; 36 J. P. 375. And it was held that a contract for the engagement of a master of a workhouse must, in order to bind the guardians, be under seal. *Austin* v. *Bethnal Green* (*Guardians of*), *supra*.

In one case, *Smart* v. *West Ham Union* (*Guardians of*), 10 Ex. 867, PARKE and ALDERSON, BB., expressed dissent from the decision in *Clarke* v. *Cuckfield Union* (*supra*). As already stated, however, the latter case was followed in *Nicholson* v. *Bradfield Union*; and in *Young* v. *Leamington* (*Mayor, &c., of*), *infra*, the House of Lords affirmed the correctness of that decision as being founded on justice and convenience.

(*b*) 11 & 12 Vict. c. 63, s. 85, placed the limit at £10, but this was extended by 37 & 38 Vict. c. 89, s. 30, to £50.

(*c*) The provisions of this paragraph are imperative and not directory only. When a local board engaged with a builder to perform certain works with reference to a sewer, but there was no contract under seal, it was held that though the works were executed no action could be maintained on the contract. The court proceeded upon the ground that the local board must charge the rates with the costs of the contract, and that they could not do so unless they fulfilled the exigency of the statute by entering into the contract in strict conformity with its requisitions. *Frend* v. *Dennett*, 4 C. B. (N.S.) 576; 27 L. J. C. P. 314; 4 Jur. (N.S) 897; 23 J. P. 56. And the Court of Chancery afterwards decided that no relief in equity could be given to the contractor (5 L. T. (N.S.) 73). In a case decided in 1878, the facts were as follows: The defendant, an urban authority, verbally directed their surveyor to employ the plaintiff to prepare plans for offices. The plans were prepared by the plaintiff, and the defendants advertised for tenders for building the offices in accordance therewith, but when these were sent in it was found that the plaintiff's plans were upon too extensive a scale, and the intended offices were not erected. There was no ratification under seal of the act of the plaintiff's surveyor in procuring the plans. At the trial, the jury found that the offices were necessary for the purposes of the defendant, and that the plaintiff's plans were necessary for the erection of the buildings for which they were designed. It was held by the Court of Appeal, affirming the decision of LINDLEY, J., that assuming the contract was founded on an executed consideration, the plaintiff could not recover, for the section was imperative. *Hunt* v. *Wimbledon Local Board*, 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. (N.S.) 115; 27 W. R. 123; 43 J. P. 284. This decision has since been considered and followed by the House of Lords. That august tribunal has held that the provisions of this paragraph are obligatory and not merely directory, and apply to an executed contract of which the urban authority have had the full benefit and enjoyment, and which has been effected by their agent duly appointed under their common seal. *Young* v. *Leamington* (*Mayor, &c., of*), 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. (N.S.) 1; 31 W. R. 925; 47 J. P. 660.

Where the urban authority are a municipal corporation, they cannot be treated as a separate body for the purposes of this Act. A contract with the

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corporation as a sanitary authority is substantially a contract with the corporation. *Andrews* v. *Ryde* (*Mayor &c., of*), L. R. 9 Ex. 302; 43 L. J. Ex. 174; 23 W. R. 58.

The provisions of this paragraph do not apply to a contract under £50. Such a contract may be made by parol. Per BRAMWELL, L. J., in *Hunt* v. *Wimbledon Local Board* (*supra*). The paragraph applies only to a contract to which the parties, at the time of entering into it, contemplate that it shall exceed that sum. Therefore, when scarlet fever had broken out, and an urban authority appointed a committee under section 200, and a medical man agreed verbally with the committee on behalf of the urban sanitary authority to attend patients at the rate of 5*s.* 3*d.* per tent per day, and attended until the amount due was nearly £100, it was held, affirming the judgment of STEPHEN, J., that although more than £50 became due it was not a contract "whereof the value or amount exceeds £50" within the meaning of the section, because at the time of entering into it the parties had not ascertained that it would exceed £50, and that the urban authority were liable to the medical man. *Eaton* v. *Basker*, 7 Q. B. D. 529; 50 L. J. Q. B. 444; 44 L. T. (N.S.) 703; 29 W. R. 597; 45 J. P. 616.

An agreement by a local board compromising an action is not within this section, and is not void by reason of its not being under seal. *Attorney-General* v. *Gaskill*, 22 Ch. D. 537; 52 L. J. Ch. 163; 31 W. R. 135; 47 L. T. (N.S.) 566.

1 Vict. c. 78, s. 44 (repealed and substantially re-enacted by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 141), after reciting that it was expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund, provided that any order of the council of any borough for the payment of money out of the borough fund might be removed into the court by *certiorari*. A resolution was passed by a corporation ordering the payment of certain sums each exceeding £50, to contractors for costs incurred in paving a street, no contract having been entered into under the seal of the corporation. On an application for a *certiorari* to bring up and quash such resolution on the ground that it was a misapplication of the borough funds under the Act above cited, it was held that as the work was useful and done at a reasonable cost, and there was no suggestion of corruption or partiality, there had been no misapplication, and the court in its discretion refused to grant the *certiorari*. *Reg.* v. *Norwich* (*Mayor of*), 30 W. R. 752.

"The enactment relates to a contract which is the act of both parties, and is applicable not to one of them alone, but to both of them. I do not mean to say that the section makes anything particularly necessary upon the part of the contractor, but it requires that the evidence of the obligation of the two parties must be in writing and sealed with their seals." Per BRAMWELL, L. J., in *Hunt* v. *Wimbledon Local Board*, *supra*.

11 & 12 Vict. c. 63, s. 151, exempted the contracts of local authorities from stamp duty. That exception was taken away by 35 & 36 Vict. c. 79, s. 42, and has not been restored. As to the effect of a local Act incorporating the first-mentioned Act, and thereby extending the exemption to deeds executed under the local Act, see *Bath* (*Mayor, &c., of*) v. *Commissioners of Inland Revenue*, 40 L. J. Ex. 181; 20 W. R. 80.

(*d*) The principle of the above decision of *Frend* v. *Dennett*, applies to the specification of these several matters. See *Young* v. *Leamington* (*Mayor of*), *supra*. From the observations of the Lords in that case, it may possibly be inferred that this sub-section is mandatory and not directory, but it must be observed that "shall" is the word used.

A contract between a local board and the plaintiffs for levelling, paving, &c., certain streets, provided that the plaintiffs should be paid when the money was collected from the different owners. It turned out that the money could not be obtained from these owners on the ground that the notices given to them by the board were bad. Held, that whether the collection of the moneys was a

condition precedent to the right to sue for the price of the work or not, there was an implied contract on the part of the board to take all necessary steps for collecting the money, and that they were therefore liable to the plaintiffs for their charges. *Worthington* v. *Sudlow*, 2 B. & S. 508; 31 L. J. Q. B. 131; 6 L. T. (N.S.) 283. Note to Sect. 174.

(*e*) This sub-section is only directory, because it is something for the urban authority only to do, while sub-section 2 is something to be done by both parties, and is imperative. And the obtaining of the estimate and report from the surveyor is not a condition precedent to entering into the contract. Therefore the local board will be liable for a breach of the contract entered into for the performance of works, though the estimate and report were not obtained. *Nowell* v. *Mayor, &c., of Worcester*, 9 Ex. 457; 23 L. J. Ex. 139; 2 C. L. R. 981; 22 L. T. (O.S.) 244; 18 J. P. 88. And see *Young* v. *Leamington* (*Mayor of*), *supra*. With regard to this sub-section the Court of Queen's Bench decided that as between the local board and their constituents, "If the work may be both executed and repaired under the provisions of the Act, there must be an estimate and report on the execution *and* the repair; but if the work may be only executed, *or* only repaired according to the provisions of the Act, the estimate and report need not extend to a work not within the provisions of the Act, and not necessary for carrying it into execution. In the case of a contract for repairing an existing road, an estimate and report relating to executing the work of making that road originally would be absurd, and equally so would the estimate and report on repair where none can be done." *Cunningham* v. *Wolverhampton Local Board*, 7 E. & B. 114; 26 L. J. M. C. 33; 21 J. P. 262.

(*f*) This sub-section is directory only. This and the preceding sub-section relate to "things to be done before contracts are entered into, and done by the urban authority, the contractor having nothing to do with the matters mentioned." Per Lord BRAMWELL, in *Young* v. *Leamington* (*Mayor of*), *supra*.

With reference to the construction and effect of a contract for works between a local board and contractor, see *Roberts* v. *Bury Improvement Commissioners*, L. R. 5 C. P. 310; 39 L. J. C. P. 129; 22 L. T. (N.S.) 132; 18 W. R. 702; 34 J. P. 821.

Where the authority submit plans and estimates for execution, they do not by implication guarantee that the work can be successfully executed according to such plans and estimates. *Thorn* v. *London* (*Mayor, &c., of*), 1 App. Cas. 120; 45 L. J. Ex. 487; 34 L. T. 545; 24 W. R. 932; 40 J. P. 468.

With regard to the security to be taken, this is usually by the guarantee of sureties; and therefore great care must be taken that the sureties are fully informed of the nature of the undertaking and all the circumstances connected with it. When a local board represented that the works would be executed under the supervision of their surveyor, and did not communicate the fact that they had engaged that another surveyor should be joined in this supervision, it was held that the contractor's surety was discharged from his liability by reason of this concealment. *Stiff* v. *Eastbourne Local Board*, 19 L. T. (N.S.) 408; 20 L. T. (N.S.) 339; 17 W. R. 68, 428.

PURCHASE OF LANDS.

Power to purchase lands.

175. Any local authority (*a*) may for the purposes and subject to the provisions of this Act (*b*) purchase or take on lease sell (*c*) or exchange any lands (*d*), whether situate within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage or the supply of water to their district (*e*).

Sect. 175. Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (*f*) (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge (*g*), by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

(*a*) It is considered that if the guardians of a union, acting as the rural sanitary authority, seek to acquire lands for the purposes of this Act, they can do so without being bound by the provisions of 5 & 6 Will. 4, c. 69, and without the consent or approval of the Local Government Board unless a loan is required. The power hereby conferred is apparently referred to in the proviso to section 9, *ante*, p. 21.

(*b*) Reference appears here to be made to the provisions as to the compulsory sale of land contained in the next section, and to the provisions as to the sale of waterworks, gasworks, and markets in the previous sections applicable thereto.

See section 7, *ante*, p. 19, as to the powers of local boards and commissioners to hold lands for the purposes of their Act in the corporate name.

(*c*) It does not readily appear how the local authority can have occasion to sell land for the purposes of the Act, unless the sale is for the purpose of acquiring other more convenient land. But 35 & 36 Vict. c. 79, s. 41, enabled sanitary authorities in certain cases to mortgage their property, and this power is contained in section 235, *post*.

As to the power of local authorities to purchase land beyond their strict necessities with a view to reimbursement, see *London* (*Mayor, &c., of*) v. *Galloway*, L. R. 1 H. L. 34; 12 Jur. (N.S.) 747; 35 L. J. Ch. 477; 14 L. T. (N.S.) 865; *Quintin* v. *Bristol* (*Mayor of*), L. R. 17 Eq. 524; 43 L. J. Ch. 783; 30 L. T. (N.S.) 112; 22 W. R. 434; *Gard* v. *London Commissioners of Sewers*, W. N. 1883, p. 153; 49 L. T. (N.S.) 325.

A local board entitled to a supply of water from a corporation were held to be justified in selling a superfluity to a neighbouring local board. *Halifax* v. (*Mayor, &c., of*) v. *Soothill Upper Local Board*, *ante*, p. 70.

(*d*) See the defininition in section 4, *ante*, p. 6.

See section 51, *ante*, p. 60.

(*f*) This word is peremptory; nevertheless, some discretion must be left to the local authority as to their action under this clause, and as to when they will sell. It must be noticed that the Lands Clauses Consolidation Acts referred to in the next section provide for the sale of superfluous lands, but it is presumed that the section in the text supersedes that provision, interposing the control of the Local Government Board.

But for these provisions the local authority could not, as it seems, have sold any of the land which they had acquired. See *Tepper* v. *Nicols*, 18 C. B. (N.S.) 121; 11 Jur. (N.S.) 18; 34 L. J. C. P. 61; 13 W. R. 270; 11 L. T. (N.S.) 509.

The authority must be careful not to apply the land so purchased to any other purpose than that for which it was acquired, except with due license properly obtained. Where a corporation under a local Act obtained a piece of land for the purpose of public recreation, they were restrained by injunction from holding a fair and exhibition of cattle upon it. *Attorney-General* v. *Southampton* (*Mayor, &c., of*), 1 Giff. 263; 6 Jur. (N.S.) 36; 29 L. J. Ch.

282. This has been further elucidated in *Attorney-General* v. *Sunderland* (*Mayor, &c., of*), *ante*, p. 189, where a corporation were allowed to build a museum and library on a part of a public park, but were restrained from building a council chamber and offices thereon. Note to Sect. 175.

(*g*) So that, in the latter case, the ratepayers for the current year would obtain the full benefit of the sale.

176. With respect to the *purchase* (*a*) of *lands* (*b*) by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say), Regulations as to purchase of land.

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (*c*), shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 (*d*):

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands *otherwise than by agreement*, shall

Publish once at the least in each of three consecutive weeks in the month of *November*, in some local newspaper circulated in their district, an *advertisement* describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a *notice* (*e*) in the month of *December* on every owner *or reputed owner* (*f*), lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands,

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or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires (*g*):

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served (*h*) the Local Government Board shall take such petition into consideration, and may either dismiss the same (*i*), or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof (*k*):

(5.) After the completion of such inquiry the Local Government Board may, by *provisional order* (*l*), empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands *otherwise than by agreement*, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served (*m*):

Provided that the notices by this section required to be given in the months of *November* and *December* may be given in the months of *September* and *October* or of *October* and *November*, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any *three or more* of such persons on behalf of all such persons (*n*).

(*a*) It is to be observed that this section only applies to purchasers. Hence the advantages hereby given are not available for leases. As to the power of a local authority to take lands on lease, see the preceding section.

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(*b*) See the definition in section 4, *ante*, p. 6. A serious question arises whether this provision operates universally. Do sections 327 and 332, *post*, exclude the subjects to which they relate from being taken compulsorily? If so, they will go far to render this section inoperative. The operation of section 332 would be of the most extensive effect. See the notes to these sections.

Facilities are given to corporations by 23 & 24 Vict. c. 16, to purchase or otherwise acquire any hereditaments for public purposes, and consequently for purposes to which this Act applies; and it may sometimes be found convenient by some urban authorities to proceed under it.

(*c*) 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18. The first-mentioned Act has been amended by an Act passsd in 1883, 46 & 47 Vict. c. 15. All these Acts are printed in the Appendix.

(*d*) 8 & 9 Vict. c. 18, contains two sets of sections: one applicable to agreements which enable persons under disability to sell and convey; the other to cases where there can be and is no agreement. The local authority may adopt the former set by the operation of this section, but they cannot adopt the latter without observing the formalities prescribed by the latter part of this section.

8 & 9 Vict. c. 18, s. 127, required the sale, within a certain time, of superfluous land, *i. e.*, land not required for the purposes of the authority, and a definition whereof is given by Lord CAIRNS, in *Great Western Railway Company* v. *May*, L. R. 7 H. L. 292; 43 L. J. Q. B. 233; 31 L. T. (N.S.) 137; 23 W. R. 141. If no sale were effected within the prescribed time, the land vested in the owner of the adjoining land. The section was not incorporated with 11 & 12 Vict. c. 63, s. 84, and some doubt existed as to whether it applied to land acquired under 21 & 22 Vict. c. 98, and subsequent Acts, but this doubt is now removed. As to the provisions of this Act for the sale of land which is not required for the purposes for which it has been acquired, see the last section.

(*e*) See in section 267, *post*, how such notices are to be served in general, and the proviso to this section as to the service on commoners.

(*f*) For one meaning of the word *owner*, see section 4, *ante*, p. 6, though that is not the only meaning to be adopted in construing this section. In 8 & 9 Vict. c. 18, s. 3, the word *owner* is "understood to mean any person or corporation who under that or the special Act would be enabled to sell or convey land for the purposes of the undertaking." And under this section it was held that notice ought to be given to persons known to be mortgagees of the property intended to be taken. *Martin* v. *London Chatham and Dover Railway Company*, L. R. 1 Ch. 501. But, *quære*, who is meant by a *reputed* owner or *reputed* lessee? And will a notice upon such reputed owner or lessee be available where there is a real owner or real lessee who is not served? It seems that the notice must be served upon the owner, lessee, and occupier. But if the local board can select any person as the reputed owner or reputed lessee there may often be a failure of due notice to the proper parties. 8 & 9 Vict. c. 18, does not refer to reputed owners. However, the poor rate of every parish now contains a column for the owner of the property assessed, and the overseers fill in the column with a name which often represents the reputed owner—that is, the name of a person who is believed by them to be the owner.

Attention should be paid to the ownership of highways and streets, for there is no power to take streets without notice such as is given by the Railways Clauses Act, 1845, 8 Vict. c. 20, s. 16, as to which see *Souch* v. *East London Railway Company*, L. R. 16 Eq. 108; 42 L. J. Ch. 477; 21 W. R. 590. The surveyor of highways is frequently treated as the owner, but this is erroneous; the general rule is that the soil belongs to the owners of the adjoining lands in equal moieties. (See *Pratt's Law of Highways*, 12th Edition, p. 10.) Moreover, local authorities need not serve notices in respect of their own property in their own occupation. Probably also an urban authority need not serve notices in respect of streets vested in them by virtue of section 149, *ante*, p. 146.

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A notice served upon one of several joint owners who act for the rest appears to be sufficient.

The notices and other proceedings correspond with those which are required previous to the introduction of a private bill into Parliament. The standing orders of the Houses of Parliament require copies of the plans to be deposited in the proper offices of both Houses when they are deposited with the board.

(*g*) The petition should be written upon folio foolscap paper, and may be signed by the chairman, and countersigned by the clerk of the board. The seal should be impressed upon a wafer gummed to the paper. It should be addressed to the President of the Local Government Board, under cover addressed to the Secretary of that Board, Whitehall, London. For further information reference should be made to the circular letter and instructions of the Local Government Board as to application for provisional orders under this section. These documents are set out at 46 J. P. 521.

See section 297, *post*, and the notes thereto, as to the restriction upon the making of a provisional order.

(*h*) The board require copies of the newspapers containing the advertisements, and a statutory declaration by the clerk testifying to the due service of the notices upon the owners, lessees and occupiers, and to their answers. This declaration should be upon the same description of paper, and should show how each notice was served.

(*i*) This dismissal may take place without local inquiry, as the board may consider that upon the petition and the opposition to it no order should be issued.

(*k*) These words have been incorporated from 21 & 22 Vict. c. 98, s. 75, but their meaning is not quite obvious. It would appear that when there is no consent, no provisional order is necessary. But it is believed that cases occur where parties will not consent to a sale, but will not oppose a provisional order, and consequently may waive an inquiry.

(*l*) As to this, see section 297, *post*.

(*m*) If the Act affirming the provisional order gives power to take more lands than those mentioned in the notice, it appears that such additional lands may be taken. *Jacomb* v. *Huddersfield* (*Corporation of*), L. R. 10 Ch. 92; 44 L. J. Ch. 96; 31 L. T. (N.S.) 466; 23 W. R. 100. As to the delineation of the lands in the deposited plans, see *Dowling* v. *Pontypool, &c., Railway Company*, L. R. 18 Eq. 714; 43 L. J. Ch. 761.

When only a few copies are required, the Local Government Board will supply them; but when a considerable number are required, an arrangement can be made with the government printer for the supply of the copies at a reasonable rate. The statute does not render this service a preliminary to the introduction of the confirming bill. Probably, however, the bill might be stayed by Parliament if it were shown that no copy of the order had been served in time to allow a petition to be presented against it within the appointed time; as section 297, sub-section (7), *post*, only makes the order *primâ facie* evidence that all proceedings previous to the making of the order have been duly taken.

(*n*) See the provisions of 8 & 9 Vict. c. 18, ss. 102—107, as to compensation for common lands.

It may be here observed that where houses or lands are taken under compulsory powers, easements belonging to the owners of adjoining properties not purchased, if they interfere with the proposed use of the houses or lands taken, may be destroyed, the owners being entitled to compensation. The readiest illustration is that of the right to lights, as to which see *Clark* v. *London* (*School Board of*), L. R. 9 Ch. 120; 43 L. J. Ch. 421; 29 L. T. (N.S.) 903; 22 W. R. 354; *Bedford* (*Duke of*) v. *Dawson*, L. R. 20 Eq. 353; 44 L. J. Ch. 549; 33 L. T. (N.S.) 156; *Baker* v. *St. Marylebone* (*Vestry of*), 35 L. T. (N.S.) 129; 24 W. R. 848. This subject is much too wide to be treated of in the present work. The various sections of the Lands Clauses Act in the

Appendix, and the notes thereon, may be consulted; but reference must be made to special treatises on these Acts, such as *Lloyd on the Law of Compensation*, *Jepson on the Lands Clauses Act*, and similar works. Note to Sect. 176.

177. Any local authority may, with the consent of the Local Government Board, let for any term any *lands* (*a*) which they may possess, as and when they can conveniently spare the same (*b*). Power to let lands.

(*a*) See the definition in section 4, *ante*.

(*b*) The authority must remember that *they* cannot change the purpose for which they have acquired the lands. It will not, therefore, be a convenient sparing of the lands within the meaning of the section, if they simply abandon the purpose for which the lands were acquired. The Act does not provide for the failure of the purpose.

Reference should be made to 23 & 24 Vict. c. 16, s. 12, which enables surplus rents in a borough to be applied towards the costs of the improvement of the borough under the Sanitary Acts. See upon this *Attorney-General* v. *Birmingham* (*Corporation of*), L. R. 3 Eq. 552.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty her heirs or successors in right of the said duchy, or any right, interest, or easement, in, through, over, or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855 (*a*), the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855 (*a*). Provision for lands belonging to the Duchy of Lancaster.

(*a*) The statute referred to is 18 & 19 Vict. c. 58.

ARBITRATION (*a*).

179. In case of dispute as to the *amount* of any compensation (*b*) to be made under the provisions of this Act (except where the mode of determining the same is specially provided for) (*c*), and in case of any matter which by this Act is authorized or directed to be Mode of reference to arbitration.

Sect. 179. settled by arbitration (*d*), then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

(*a*) These clauses as to arbitration are taken from 8 & 9 Vict. c. 18, ss. 25—27, which are set out in the Appendix, *post*, and the decisions thereon elucidate the construction and application of this Act.

(*b*) It was held that the dispute must be as to the amount of compensation and not as to the liability to pay it. *Reg.* v. *Burslem Local Board*, 1 E. & E. 1077; 28 L. J. Q. B. 345; 2 L. T. (N.S.) 667; 8 W. R. 584; 6 Jur. (N.S.) 696; *Bradby* v. *Southampton Local Board*, 4 E. & B. 1014; 24 L. J. Q. B. 239; 19 J. P. 644; 1 Jur. (N.S.) 778. And see *Reg.* v. *Metropolitan Commissioners of Sewers*, 1 E. & B. 694; 22 L. J. Q. B. 234; 17 Jur. 787. These cases, however, were considered in a recent case, *Pearsall* v. *The Brierley Hill Local Board*, 52 L. J. Q. B. 529; 47 J. P. 628. In that case it was decided that a person who claims compensation for damage sustained by reason of the exercise of the powers given by the Act, is entitled under section 308 to have the amount of compensation determined by arbitration in the manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the question of amount. This case renders it unnecessary to do more than mention *Burgess* v. *Northwich Local Board*, 37 L. T. (N.S.) 355; 26 W. R. 19; and *Utley* v. *Todmorden Local Board*, 44 L. J. C. P. 19; 31 L. T. (N.S.) 445; 39 J. P. 56, in which actions were brought on award when the liability was disputed. When, however, the dispute arises with reference to expenses under section 150, *ante*, it seems that if the liability is questioned as well as the amount, a court of summary jurisdiction is the proper tribunal both as to amount and liability. *West* v. *Downman*, *ante*, p. 167.

(*c*) See for example, section 308, *post*, when the dispute may be referred to a court of summary jurisdiction.

(*d*) See sections 22, 32, 61, 150, 179, *ante*, and section 308, *post*.

Regulations as to arbitration.

180. With respect to arbitrations under this Act (*a*), the following regulations shall be observed: (that is to say),

(1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal (*b*):

(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same (*c*):

(3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of *either* party operate as a revocation (*d*):

(4.) If for the space of *fourteen days* after any matter by this Act authorized or directed to be settled by arbitration has arisen, and *notice in writing* (*e*) by one party who has duly appointed an arbitrator has been given to the other

party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties : Sect. 180.

(5.) If before the determination of *any* matter so referred any arbitrator dies or refuses, or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of *seven days* after *notice in writing* (*e*) from the other party in that behalf, the remaining arbitrator may proceed *ex parte;* and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :

(6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within *twenty-one* days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose (*f*), the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :

(7.) Where there is more than one arbitrator, the arbitrators shall, *before they enter on the reference* (*g*), appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire (*h*) :

(8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for the purpose, the matters referred shall be determined by the umpire (*i*) :

(9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of *two months* from the date of the submission, and the time for making an award by an umpire under this Act

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shall not in any case be extended beyond the period of *two months* from the date of the reference of the matters to him (*k*):

(10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace; (that is to say),

"I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

"*A. B.*"

(11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour:

(12.) Any arbitrator, abitrators, or umpire, appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred (*l*), and may examine the parties or their witnesses on *oath* (*m*):

(13.) The *costs* of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire (*n*):

(14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto (*o*):

(15.) The award (*p*) of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference (*q*).

(*a*) When land has been taken compulsorily by a local board under the powers of the Lands Clauses Consolidation Acts (incorporated by section 176, *ante*, p. 205), and an arbitration takes place to determine the amount of compensation to be paid to the owner of the land so taken, the procedure with regard to such arbitration and the right to costs are wholly governed by the provisions of these Acts, and not by this section. *Ex parte Rayner*, 3 Q. B. D. 446; 47 L. J. Q. B. 660; 42 J. P. 807.

(*b*) The Court of Exchequer held that when a person agreed with a waterworks company that a person nominated by two others should be appointed arbitrator, and such person being so appointed awarded to the claimant a sum exceeding £50, the latter was entitled to the cost of the arbitration, although the statutory preliminaries to a reference under the Lands Clauses Consolidation Acts had not in all respects been complied with. *Martin v. Leicester Waterworks Company*, 3 H. & N. 463; 27 L. J. Ex. 432. See also *Collins* v. *South*

Staffordshire Railway Company, 7 Ex. 5; 21 L. J. Ex. 247. But *quære* whether having regard to the imperative words of this and the last section, these cases are applicable to arbitrations under this Act.

(*c*) The submission being by deed is not exempt from stamp duty.

The appointment should recite the matter in dispute, otherwise the arbitrator can only learn it from the oral discussion.

The submission is a reference by consent within the meaning of the Common Law Procedure Act, 1854. See *Warburton* v. *Haslingdon Local Board*, *infra*.

It would appear from *Pearsall* v. *The Brierley Hill Local Board*, *supra*, that the appointment of an arbitrator does not preclude the party appointing him from afterwards contesting his liability.

(*d*) As one of the parties is a corporate body, this phraseology is not quite consistent. The word stood in 11 & 12 Vict. c. 63, s. 123, under which Act the appointment in the case of a local board of health was signed by five members of the board, and as one of them might die, the legislature provided thus against the presumed consequence of his death. No such contingency can now arise with reference to the local authority.

(*e*) See sections 266, 267, *post*, as to the authentication and service of notices.

(*f*) As to extending the time, see sub-section (8), and note (*i*) thereto.

(*g*) In *Holdsworth* v. *Barsham*, 2 B. & S. 480; 31 L. J. Q. B. 145, the arbitrators appointed an umpire before entering on the reference but after the 21 days within which they ought by 11 & 12 Vict. c. 63, s. 126, to have made their award, and it was held that such appointment was not too late. In *Holdsworth* v. *Wilson*, S. C. in error, 4 B. & S. 1; 32 L. J. Q. B. 289, it was held that the power to appoint an umpire continued until the expiration of the time within which they might have made their award (in this Act two months, see sub-section (9)).

(*h*) The Local Government Board are substituted for the quarter sessions in 11 & 12 Vict. c. 63, s. 126. The board must make the appointment, and though no time is specified they must do so within a reasonable time. The application should be made to them in writing upon foolscap folio paper. It need not be under seal, but if sealed should be sealed with a seal on a wafer, as wax is frequently broken in the passage.

(*i*) It must be observed that the authority of the umpire commences at the end of the 21 days, or of the extended time in the case of a failure to make the award. This is important, for it has been a common practice for umpires to calculate the time from the date of their receiving notice of the fact that the arbitrators have failed to award. See *Skerratt* v. *North Staffordshire Railway Company*, 17 L. J. Ch. 161.

(*k*) It has been held that a reference to arbitration under the Lands Clauses Act, is subject to the provisions of the Common Law Procedure Act, 1854, with respect to the referring back of an award to the arbitrator, and to the enlarging of the time by the court notwithstanding the expiration of the time within which the award should have been made. *In re Dare Valley Railway Company*, L. R. 4 Ch. 554; 17 W. R. 717; *Rhodes* v. *Airedale Drainage Commissioners*, 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46; 24 W. R. 1053. These cases were followed with reference to an arbitration under this section in *Warburton* v. *Haslingdon Local Board*, 48 L. J. Q. B. 451, in which the previous decision in *Kellet* v. *Tranmere Local Board*, 34 L. J. Q. B. 87; 11 L. T. (N.S.) 457; 13 W. R. 209, was dissented from. It would appear, therefore, that notwithstanding the provisions in the text, the time for making the award may be extended beyond the period of two months, as in *Ward* v. *The Secretary of State for War*, 32 L. J. Q. B. 53; or even after the award has been made after the two months has elapsed, as in *Lord* v. *Lee*, L. R. 3 Q. B. 404; *Re Warner and Powell*, L. R. 3 Eq. 261, and similar cases. For more detailed information on this subject, *Russell on the Law of Arbitration* should be consulted.

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(*l*) According to *The Caledonian Railway Company* v. *Lockhart*, 6 Jur. (N.S.) 1311; 3 Macq. 808; 3 L. T. (N.S.) 252; 8 W. R. 373, the arbitrator may employ an expert, and may, if he deem it necessary, consult men of science. He cannot, however, delegate his authority. See *The Eastern Counties Railway* v. *Eastern Union Railway Company*, 3 De G. J. & S. 610.

As to the damages which may be awarded, see section 308, *post*.

The arbitrator may be called as a witness in any proceedings to enforce his award, and can be required to state what passed before him, and what was submitted for his consideration, but he cannot be asked what passed in his own mind when he formed his decision. *Buccleugh* (*Duke of*) v. *Metropolitan Board of Works*, L. R. 5 H. L. 418; 41 L. J. Ex. 137; 27 L. T. (N.S.) 1.

(*m*) See for the definition of an oath, 13 & 14 Vict. c. 21, *ante*, p. 106.

(*n*) The Court of Queen's Bench decided that an action could be brought for the amount of costs awarded by the arbitrator until they had been taxed. But this decision was reversed by the Exchequer Chamber in error. *Holdsworth* v. *Banham*, *supra*; *Metropolitan Railway Company* v. *Sharpe*, 5 App. Cas. 425; 50 L. J. Q. B. 14; 43 L. T. (N.S.) 130; 28 W. R. 617; 44 J. P. 716.

The costs of an arbitration under this Act are not within the third-party clauses of the Attorney and Solicitors Act (6 & 7 Vict. c. 73, s. 38), which applies only to the taxation of costs as between solicitor and client, and not to party and party costs. It is not open to the party liable to elect to pay such costs as between solicitor and client, inasmuch as the results of that mode of taxation may be adverse to the solicitor whose bill is taxed. *In re Cowdell*, 52 L. J. Ch. 246; 31 W. R. 335.

(*o*) That is, of either division of the High Court. The court has the same jurisdiction with respect to such a rule as in ordinary cases. *In re Harper and Great Eastern Railway Company*, L. R. 20 Eq. 39; 44 L. J. Ch. 507.

(*p*) This award is no longer exempt from stamp duty since 35 & 36 Vict. c. 79, s. 42.

(*q*) These words are somewhat more emphatic than those used in 8 & 9 Vict. c. 18, ss. 25, 27, 37, but the effect appears to be the same. An award under that Act may be set aside on motion made within the time limited by the statute 9 & 10 Wm. 3, c. 15, for setting aside an award under that Act. *In re Harper and the Great Eastern Railway Company*, *supra*. In the same case it was held that though in form the umpire had no power to order payment of the amount awarded, it did not vitiate the award. As to the time within which a motion to set aside an award must now be made, see *Christ's Hospital*, *Brecknock* v. *Martin*, 3 Q. B. D. 16; 46 L. J. Q. B. 591; 36 L. T. (N.S.) 537; 25 W. R. 637.

A question as to the power to set aside an award under this Act was raised but not decided in *Burgess* v. *Northwich Local Board*, *ante*, p. 210.

The award is only binding on the parties to the reference. As to this see *Tunbridge Local Board* v. *Ackroyd*, *ante*, p. 167.

Claims under twenty pounds may be referred to court of summary jurisdiction.

181. All questions referable to arbitration under this Act may, when the amount in dispute is less than *twenty pounds*, be determined *at the option of either party* (*a*) before a *court of summary jurisdiction* (*b*), but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

(*a*) See, however, section 22, *ante*, p. 39, where the local authority are not allowed to exercise such an option, the power being confined to the other party

when the dispute is as to the use of a sewer by an owner or occupier without the district. **Note to Sect. 181.**

(*b*) See the definition, *ante*, p. 15.

BYE-LAWS.

182. All bye-laws made by a local authority under and *for the purposes of this Act* (*a*) shall be under their common seal (*b*); and any such bye-law may be *altered* or *repealed* by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act (*c*). Authentication and alteration of bye-laws.

(*a*) Bye-laws are made under sections 44, 80, 90, 113, 141, 157, 164, 167, 169, 171, 172, 314, of this Act; under the Public Health (Interments) Act, 1879, 42 & 43 Vict. c. 31, s. 2; the Public Health (Fruit Pickers) Act, 1882, 45 & 46 Vict. c. 23, s. 2; and under several of the statutes incorporated by this Act, *e.g.*, the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, ss. 68, 69; Baths and Washhouses Acts, 9 & 10 Vict. c. 74, s. 34, and 41 Vict. c. 14, s. 6; the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 128; the Markets and Fairs Clauses Act, 1847, 10 Vict. c. 14, s. 42; the Acts relating to lodging-houses for the labouring classes, 14 & 15 Vict. c. 34, s. 46; the Artizans and Labourers Dwellings Act, 42 & 43 Vict. c. 64, s. 20; the 24 & 25 Vict. c. 61, s. 21, re-enacted in Schedule V., &c.

(*b*) It will be remembered that all local authorities are now incorporated, and consequently have a common seal. No signature of the members is required, but the affixing of the common seal should be attested by the clerk or a member of the board, and should be done in pursuance of a resolution entered on the minutes.

(*c*) See section 315, *post*, which repeals previous inconsistent bye-laws, and section 326, *post*, which continues all bye-laws previously duly made under any of the Sanitary Acts.

Some important observations on this proviso will be found in the circular letter on model bye-laws addressed to sanitary authorities by the Local Government Board on the 25th July, 1877.

The local authority have no general power to make bye-laws independently of this Act in respect of its purposes. *Reg.* v. *Wood*, 5 E. & B. 49; 3 C. L. R. 1134; S. C. sub. nom. *Reg.* v. *Rose*, 1 Jur. (N.S.) 802; 24 L. J. M. C. 130; 19 J. P. 676.

183. Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of *five pounds* for each offence, and in the case of a *continuing offence* (*a*) a further penalty not exceeding *forty shillings* for each day after written notice of the offence from the local authority: but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty (*b*). Power to impose penalties on breach of bye-laws.

Nothing in the provisions of any Act incorporated herewith shall

Sect. 183. authorize the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

(*a*) For examples of continuing offences in the case of buildings, see sections 156 and 158, *ante*, pp. 173, 183.

(*b*) It is considered that the authority should fix the precise penalty for the breach of the bye-law, limited by the amount in the text, providing, however, that the same may be reduced by the justices or court in which it is sued for.

As to the recovery of this penalty, see section 251, *post*.

Confirmation of bye-laws.

184. Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which board is hereby empowered to allow or disallow the same as it may think proper (*a*); nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, *one month* at least before the making of such application (*b*); and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward (*c*).

The clerk of the local authority shall, on the application of any such ratepayer (*d*), furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy (*e*).

A bye-law required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority (*f*).

(*a*) See the circular letter of the Local Government Board referred to in note (*c*), to section 182, *post*.

The Local Government Board give full consideration to the *legality* as well as the *policy* of the bye-laws, so as to satisfy themselves on both points; but of course they cannot guarantee the former.

(*b*) This refers to the application for confirmation and not to the sending of a draft of the proposed bye-laws for perusal.

(*c*) These provisions will enable any person to apply to the Local Government Board with the view of preventing the confirmation of any bye-law.

(*d*) It is presumed that any person who is actually rated to the current rate would be a *ratepayer* within the meaning of this section, and that the definition in Schedule II., rule 11, *post*, is not applicable. But whether persons occupying rateable property who are not actually rated would be within the section is doubtful.

(*e*) The neglect of this regulation would not it seems invalidate the bye-laws.

(*f*) The confirmation by the Local Government Board, however, gives no validity to a bye-law not warranted by the provisions of the Act. *Reg.* v. *Wood*, *ante*, p. 215. Many bye-laws confirmed under the previous Acts have been held by the courts of law to be invalid. The Local Government Board in their letter of confirmation warn the authorities as to the result. The cases in which bye-laws have been held invalid will be found under the several sections by virtue of which bye-laws have been made. Note to Sect. 184.

185. All bye-laws made by a *local* authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority (*a*); and a copy thereof shall be delivered to any *ratepayer* (*b*) of the district to which such bye-laws relate, on his application for the same; a copy of any bye-laws made by a *rural* authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any *ratepayer* (*b*) of the parish at all reasonable hours. Bye-laws to be printed, &c.

(*a*) See in section 306, *post*, the penalty upon any person who destroys or defaces any board on which a bye-law is affixed.

Bye-laws made under section 167, *ante*, p. 194, must also be published as that section directs.

By a local Act passed in 1847, commissioners were empowered to make bye-laws which were to be published by being printed and a copy delivered to every person applying for the same, and by painting or placing on boards to be hung up on the front of the office of the commissioners, and also on some conspicuous part of the works or locality to which the same related. Under the Public Health Act, 1848 (11 & 12 Vict. c. 63, ss. 115, 116), the prescribed mode of publication is the same as that in the text. It was held that a publication in the manner prescribed by the last-mentioned Act was sufficient. *Fielding* v. *Rhyl Improvement Commissioners*, 3 C. P. D. 272; 38 L. T. (N.S.) 223; 26 W. R. 881; 42 J. P. 311.

(*b*) See note (*d*) to the last section. It will be observed that for copies of the proposed bye-laws a payment is to be made, but not so in regard to the bye-laws when made.

186. A copy of any bye-law made under this Act by a local authority (not being the council of a borough (*a*)), signed and certified by the clerk of such authority (*b*) to be a true copy (*c*) and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making confirmation and existence of such bye-laws without further or other proof. Evidence of bye-laws.

(*a*) This exception was made because 36 & 37 Vict. c. 33, s. 2, provided for the *primâ facie* evidence of bye-laws made by a town council. That Act is repealed, but its provisions as to evidence of bye-laws are re-enacted by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 24, which provides that the production of a written copy of a bye-law made under that Act, or any former, or present, or future, general or local Act, if authenticated by the corporate seal, shall, until the contrary is proved, be sufficient evidence of the

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due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved or confirmed by the authority whose confirmation or approval is required to the making or before the enforcing of the bye-law.

(*b*) Proof will be required of the clerk's signature.

(*c*) In *Drew* v. *Harlow*, 39 J. P. 420, a printed copy of the bye-laws of a town council was laid before the sessions, and this was held to be insufficient proof of the bye-laws.

Bye-laws made under section 90 of 5 & 6 Will. 4, c. 76, to be submitted to Local Government Board.

187. Bye-laws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a secretary of state, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act.

5 & 6 Wm. 4, c. 76, is repealed by the Municipal Corporations Act, 1882, section 23 of which provides as follows:—The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case £5, as they deem necessary for the prevention and suppression of offences against the same. . . . Nothing in this section shall interfere with the operation of section 187 of the Public Health Act, 1875, and that section shall have effect as if this section were therein referred to instead of section 90 of the Municipal Corporations Act, 1835 (5 & 6 Wm. 4, c. 76), but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, or with respect to prevention or suppression of nuisances. By section 260 of the same Act bye-laws in force on the 31st December, 1881, continue in force notwithstanding the passing of the Act.

As to regulations of local authority.

188. The provisions of this Act relating to bye-laws shall not apply to any *regulations* which a local authority is by this Act authorized to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

Regulations are made under sections 125, 143, 189, *ante*.

Officers and Conduct of Business of Local Authorities.

Officers of Local Authorities.

Appointment of officers of

189. Every urban authority *shall* (*a*) from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer (*b*): Provided that if

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urban authority.

any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act (*c*), and may make *regulations* (*d*) with respect to the duties and conduct of the officers and servants so appointed or employed.

Subject in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act (*e*), the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances, as the urban authority may think proper (*f*); and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority *at their pleasure* (*g*).

(*a*) This word is peremptory. It is imperative upon the urban authority to make these appointments. There is some ambiguity in the section. It appears to recognize that the urban authority has some special existence as such, distinct from its normal character and capacity as the council of a borough, &c. But section 6 (*ante*, p. 18), only superadds certain functions under this Act to those which the body already possessed (see note on section 198, *post*). It appears, therefore, that the officers of such body should discharge the requisite services rendered necessary by this Act, though by reason of the additional duties they may be entitled to additional remuneration. Separate appointments are prohibited, and it seems to be irrational that one person should hold two offices under the same body to do what are the same or analogous duties.

It will be observed that the section only provides for one person being appointed; under the next section there may be several.

(*b*) The appointment of these officers appears to be complete by election, and no document in writing is required, but there should be a minute. See *Smart* v. *West Ham Union* (*Guardians of*), 10 Ex. 867; 3 C. L. R. 696; 25 L. J. Ex. 210; 26 L. T. (o.s.) 285; 20 J. P. 596; *Reg.* v. *Greene*, 17 Q. B. 793; 21 L. J. M. C. 137; 16 J. P. 183; *Roberts* v. *Drewitt*, 18 C. B. (N.S.) 48. The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 149, required all consents, sanctions, approvals, or authorities of the local board to be in writing, and under their seal and the hands of five or more of them. It was held that this did not mean that every act of the local board should be under their hands and seals, and therefore that the appointments of clerk and surveyor to the board need not be so under their hands and seals. *Smith* v. *Hirst*, 23 L. T. (N.S.) 665; 35 J. P. 247. But if the officer of the board seek to raise any question as to the breach of the engagement in any civil court, the proceeding will fail if there be no contract under seal, if the appointment is worth £50. *Dyte* v. *St. Pancras* (*Guardians of*), *Austin* v. *Bethnal Green* (*Guardians of*), *ante*, pp. 200, 201.

In section 191, *post*, p. 222, provision is made as to the mode of appointment of the medical officer.

Under 11 & 12 Vict. c. 63, the appointment was exempt from stamp duty by reason of section 151. On the repeal of that Act the stamp exemption ceased

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to exist, but by 38 & 39 Vict. c. 23 s. 14, the stamp duties charged under the Stamp Act, 1870 (33 & 34 Vict. c. 97), in respect of the appointment to an office or employment have now ceased to be payable.

Proof of the appointment of the officer, where express proof is required, may be supplied by the production of the minutes of the board containing an entry of the appointment.

In *Smith* v. *Hirst*, *supra*, it was held that the title of persons acting as such officers cannot be questioned by third persons.

(*c*) This statute does not require any particular qualification for any of these officers, except the medical officer, as to whom see next section, but generally it is found most appropriate to select a solicitor for the clerk, and an engineer or professional surveyor for the surveyor.

(*d*) The previous Act, 11 & 12 Vict. c. 63, s. 37, provided that the local board might make bye-laws in this respect (see *Ex parte Richards*, *infra*), which bye-laws required confirmation and other formalities. This is changed, and the sanitary authority are only required to make *regulations*, which, as seen above (section 188), do not require confirmation.

When an appointment is made and the part of the salary is paid by the government, the Local Government Board prescribe the duties to be discharged by the officer. They may also prescribe the duties of a medical officer of health in all cases. See section 191, *post*, p. 222.

With reference to the duties of the clerk of the local authority, several cases may be mentioned. The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 138, provided that certain local boards might be sued in the name of the clerk. 29 & 30 Vict. c. 90, s. 46, however, incorporated such boards. Hence, when a suit in equity was brought against the clerk in his official capacity, a demurrer was allowed on the ground of want of equity, but leave to amend was granted, the clerk's name being retained as he was required to answer in his official capacity. *Deeks* v. *Bailey*, 21 L. T. (N.S.) 581.

A clerk to the local board who was also collector of rates, having engaged the plaintiffs, a firm of law stationers, to assist him in copying the valuation list in the rate book, and also in copying the rate accounts, and having absconded, the plaintiffs sued the local board in the Salford Hundred Court, for the amount due for such copying. It was held that the plaintiffs were rightly non-suited, on the ground that there was no evidence that the clerk had authority to incur the debt for the local board. *Meredith* v. *Radcliffe Local Board*, 43 J. P. 819.

When a solicitor had been appointed clerk to a local board with a salary, for conducting the legal as well as the ordinary business of the board, it was held by BACON, V.C., upon an interlocutionary motion in an action for *mandamus* to compel production of papers, that whatever claim the clerk might have against the board for payment of costs in respect of professional services, he had no right, being in the relation of a servant to the board, to refuse production of the legal papers or other documents claimed by the board as belonging to them. It was held, however, by the court of appeal, that as such an order would prejudice the clerk's lien, it could not be made before the trial of the action without payment into court of a sum sufficient to meet the amount claimed by the clerk, upon which he was to have the same lien as upon the papers; and the court ordered that upon that being done, the clerk should deliver up to the plaintiffs all books and papers claimed in the action. *Newington Local Board* v. *Eldridge*, 12 Ch. D. 349.

It would appear that if in the course of legal proceedings a local board are ordered to answer interrogatories by their clerk, he cannot claim any privilege on the ground that he is acting as solicitor of the board. *Swansea* (*Mayor of*) v. *Quirk*, 5 C. P. D. 106; 49 L. J. C. P. 157; 41 L. T. (N.S.) 758; 28 W. R. 371; 44 J. P. 378.

(*e*) See section 191, *post*, p. 222.

(*f*) With regard to the recovery of their salaries by officers of the local board, it has been generally considered that the only remedy was a writ of

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mandamus directed to the board to levy a rate, or an action on the case against the treasurer or other officer, alleging that he had funds to pay the salary, but had neglected or refused to pay the same. It had been held that no action would lie against the board directly for the salary. See *Bogg* v. *Pearce*, 10 C. B. 534; 20 L. J. C. P. 99; 16 L. T. (o.s.) 462; 2 L. M. & P. 21; *Addison* v. *Preston*, 12 C. B. 108; 21 L. J. C. P. 146; 19 L. T. (o.s.) 184; 16 Jur. 643; *Smart* v. *West Ham Union* (*Guardians of*), *supra*; *Cane* v. *Chapman*, 5 A. & E. 647. Probably these principles do not apply where there is a contract under seal providing for the payment of a salary. And in *Hall* v. *Taylor*, E. B. & E. 107; 27 L. J. Q. B. 311; 31 L. T. (o.s.) 151; 23 J. P. 20, it was held that when a local board is empowered to pay a salary out of the rates leviable by them, an action of debt for the amount might be maintained by the officer against the board. From the judgment in that case it would appear that some of the previous cases, such as *Bogg* v. *Pearse*, have no application to a local board which is a corporation. But in any case in which judgment is obtained against the board, it can seldom be enforced otherwise than by *mandamus*.

It is to be observed that a claim for a writ of *mandamus* cannot be sustained if there is any other effectual remedy. In an action by executors against the clerk of commissioners under a local Act, in which the plaintiffs claimed a writ of *mandamus* under section 68 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), the declaration stated that the commissioners were indebted to the testator for the agreed salary payable by them to him for services rendered by him as clerk to the commissioners, and also for other work by him as the attorney of and otherwise for the commissioners in and about their business. The declaration then alleged that the said debts became and were a charge on any moneys which might be in the hands of the commissioners, and which should have been collected by them under and by virtue of the said Act; and if the commissioners should not have in their hands any moneys sufficient to pay the said debts, then such debts became a charge and were chargeable on a rate leviable and to be levied under the Act. The defendants pleaded to so much of the debt as became due on simple contract, the Statute of Limitations, and to the debts except as to the agreed salary, that no signed bill had been delivered; also that the commissioners had no fund whereout they could pay the said debts. Held, first that the declaration was bad, inasmuch as, assuming that the services in respect of which the agreed salary was claimed were payable out of the rates, the others might be services for which the commissioners were personally liable, and consequently the remedy was by action and not by claim of *mandamus*; secondly, that on the same principle the two first pleas were good; and *semble*, that the last plea was also good. *Bush* v. *Beavan*, 1 H. & C. 500; 32 L. J. Ex. 54; 7 L. T. (N.S.) 106; 10 W. R. 845. It was subsequently held that it was not necessary for the clerk to deliver a signed bill, and that a report of a committee in which the debt due to the clerk was scheduled as a liability did not take the case out of the Statute of Limitations. *Bush* v. *Martin*, 2 H. & C. 311; 33 L. J. Ex. 17; 8 L. T. (N.S.) 509; 11 W. R. 1078; 27 J. P. 825.

It appears that when an officer performs, at the request of the local board, services of a kind different from those which he is bound to fulfil as such officer, there is no objection to his being paid a gratuity for so doing in addition to his salary. See *Reg.* v. *Gloucester* (*Mayor of*), 23 J. P. 709.

(*g*) In consequence of this provision the court refused to grant a rule for a *quo warranto* information, applied for by the former holder of the office of clerk to a local authority, on the ground that the dismissal from office had been illegal, for if he had been reinstated he might legally be dismissed immediately. *Semble*, that a resolution of a local board dismissing an officer, is not a resolution rescinding the resolution by which he was appointed, within the meaning of a bye-law with respect to the rescission of resolutions of a local board. (*R.* v. *Wrexham Turnpike Roads* (*Trustees of*), dissented from); *Ex parte Richards*,

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3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. (N.S.) 684; 26 W. R. 695; S. C. *Reg.* v. *Jones*, 42 J. P. 614.

Possibly the power to dismiss at pleasure may be provided against by express contract; but such contract must be under seal. See note on section 174, *ante*, p. 200.

As to the power of the board to dismiss without notice and without assigning reasons when there is no express contract, see *Reg.* v. *Darlington School*, 6 Q. B. 682; *In re Teather*, 19 L. J. M. C. 70.

Appointment of officers of rural authority.

190. Every rural authority *shall* (*a*) from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

There may be awarded to the *clerk* and *treasurer* of the guardians of any union, in respect of the *additional duties* (*b*) of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid.

(*a*) This is imperative upon the rural sanitary authority. It will be noticed that there is no reference here to the clerk or treasurer, for in all unions there are these officers, who will only have to discharge extra duties and render extra services. See section 9, *ante*, p. 20.

(*b*) These duties will be mainly the attendances on the sanitary committees, and the making out and keeping of accounts. Legal business is that of the guardians in their corporate capacity, and is provided for by the general order applicable to that subject, though some cases may be considered as raising a claim for extra remuneration. See the Consolidated Order Amendment Order, 26th February, 1886, in *Glen's Poor Law Orders*, at p .304. As to the power of guardians to grant remuneration for extraordinary services, see the Consolidated Order, 24th July, 1847, Art. 172 (*Glen*, p. 158).

As to medical officer of health, &c.

191. A person shall not be appointed medical officer of health under this Act unless he is a *legally qualified medical practitioner* (*a*); and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification appointment duties salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament (*b*), and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for *two* or more districts, by the *local authorities* (*c*) of such districts;

and the Local Government Board shall by order (*d*) prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities. Sect. 191.

Any district medical officer *of a union* may, with the sanction of the Local Government Board and subject to such conditions as the said board may prescribe, be appointed a medical officer of health (*e*); and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act (*f*).

In case of illness or *incapacity* (*g*) of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

(*a*) That is, a person duly registered under 21 & 22 Vict. c. 90.

(*b*) See the general orders issued by the Local Government Board in this behalf.

(*c*) These words include each class of authorities, urban and rural.

(*d*) See section 295, *post*. The board have already framed and issued several orders under this section.

(*e*) It must be carefully noticed that this appointment cannot be made absolutely. The Local Government Board must give their sanction. They will require to be satisfied not only as to the capacity of the individual to execute the duties, but that he can do so without detriment to the discharge of his other official duties. A minute of the board with reference to these joint appointments has been issued.

(*f*) Note that the medical officer of health has no definite powers. The orders of the Local Government Board referred to above prescribe his duties, and some powers are incidentally given to him in this Act, but this paragraph confers upon him the powers of an inspector of nuisances.

(*g*) Perhaps this word will cover the necessary or unavoidable absence of the officer.

192. The same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk (*a*); and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer. Offices tenable by same persons.

Any person offending against this enactment shall forfeit and pay the sum of *one hundred pounds*, which may be recovered by *any person*, with the full costs of suit, by action of debt (*b*).

(*a*) The object of this prohibition, which is common in local Acts, appears to be to prevent the clerk, who represents the board, from holding their money, and thus to create a check upon the two officers. The clerk cannot deal with

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the money of the board, because he does not hold it, and the treasurer must hold it until the clerk, under the direction of the board, gives him authority to pay it away.

Where a local Act provided that a corporation should not appoint as treasurer the person who was appointed clerk, and a penalty was imposed on any person, being the clerk or his partner or clerk, who should in any manner officiate for the treasurer, it was held that the corporation were prohibited from appointing the clerk to such officer as *assistant* treasurer; but where the corporation had so appointed the clerk, and he had discharged some of the duties of the treasurer, it was held that it was a question for the jury whether he did so *bonâ fide* and in the belief that he was legally appointed by them as an independent officer, or colourably and in evasion of the Act; and that, in the former case, he would not be liable to the penalty, but in the latter he would. *Hawkings* v. *Newman*, 4 M. & W. 213; 8 L. J. Ex. 82. The words of the section render a similar evasion of this Act impracticable.

(*b*) The consent of the Attorney-General under section 253 is not necessary in order to maintain such an action. Per BRAMWELL, L. J., in *Fletcher* v. *Hudson*, 5 Ex. D. 287; 49 L. J. Ex. 793; 43 L. T. (N.S.) 404; 45 J. P. 5.

Officers not to contract with local authority.

193. Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested in any *bargain* or *contract* (*a*) made with such authority for any of the purposes of this Act.

If any such officer or servant is so concerned or interested, or, *under colour of his office or employment*, exacts or accepts any fee or reward whatsoever other than his proper salary wages and allowances (*b*), he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of *fifty pounds*, which may be recovered by *any person* (*c*), with full costs of suit, by action of debt.

(*a*) See the note to Sched. II., Rule No. 64, *post*.

(*b*) This provision is intended to apply to fees from other persons than the local authority, and is levelled at the practice of demanding fees from persons seeking aid from the board, or exposed to proceedings by them. But the language is sufficiently general to prevent the officer receiving gratuities for extra services rendered to the board. The case of *Ex parte Mellish*, 8 L. T. (N.S.) 47, shows that gratuities to officers paid out of the rates are not lawful, and may be disallowed at the audit. Guardians may, however, in certain cases, grant additional remuneration for extraordinary services. See section 190, note (*b*), *ante*, p. 221, and see *Reg.* v. *Gloucester* (*Mayor of*), *ante*, p. 221.

It is to be observed that the statute applies to demands made *under colour of the office*, and therefore not to claims when the officer acts and makes a demand for services which he renders independently of his office. Thus the clerk may charge professionally for contracts prepared for contractors, if they think proper to employ him, and he can do so without injury to the board. Perhaps, also, the surveyor may not be prevented from acting professionally for persons within the district, but such conduct may lead to a mischievous result.

(*c*) These proceedings cannot now be taken without the consent in writing of the Attorney-General, 47 & 48 Vict. c. 74, *post*, p. 470.

Officers intrusted.

194. Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will

or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof. Sect. 194. with money to give security.

The local board must determine for themselves what securities they will deem sufficient. Generally the security given by collectors is a bond with two sureties. There are now several guarantee societies who will undertake to guarantee the fidelity of these officers; but there are usually many conditions imposed in their policies, the neglect of which invalidates the security, and the omission is seldom discovered until the security is attempted to be enforced. Moreover, they are generally determinable upon notice by the company, so that the security may fail at the time when the necessity for it becomes most urgent. 38 & 39 Vict. c. 64 (Government Officers Security Act, 1875), does not apply to these officers.

Section 151 of 11 & 12 Vict. c. 63, exempted the bond or security given on behalf of the officer from stamp duty, but was repealed by 35 & 36 Vict. c. 79, in respect thereof for the future.

With regard to the terms of the condition, it should be made to be operative notwithstanding the change of tenure of the office, or alteration of the salary in amount or mode of payment, the change of district, or the imposition of new duties upon the officer by subsequent legislation, as these contingencies, if not provided against, may destroy the liability of the sureties. See *Bamford* v. *Iles*, 3 Ex. 380; 18 L. J. M. C. 49; 13 J. P. 652; *Holland* v. *Lea*, 9 Ex. 430; 2 C. L. R. 532; 23 L. J. Ex. 122; 18 J. P. 201; *Frank* v. *Edwards*, 8 Ex. 214; 22 L. J. Ex. 42; *Birmingham* (*Mayor of*) v. *Wright*, 16 Q. B. 623; 15 Jur. 749; 20 L. J. Q. B. 214; *Worth* v. *Newton*, 10 Ex. 247; 2 C. L. R. 1471; 23 L. J. Ex. 338; 24 L. T. (O.S.) 157; *North Western Railway Company* v. *Whinray*, 10 Ex. 77; 23 L. J. Ex. 261; 2 C. L. R. 1207; *Oswald* v. *Berwick* (*Mayor of*), 5 H. L. Cas. 856; 2 Jur. (N.S.) 743; 25 L. J. Q. B. 383; *Clifton Dartmouth Hardness* (*Mayor of*) v. *Selly*, 7 E. & B. 97; 3 Jur. (N.S.) 434; 26 L. J. Q. B. 90; *Pybus* v. *Gibb*, 6 E. & B. 902; 3 Jur. (N.S.) 315; 26 L. J. Q. B. 41; *Cambridge* (*Mayor of*) v. *Dennis*, E. B. & E. 660; 5 Jur. (N.S.) 265; *Portsea Island Union* (*Guardians of*) v. *Whillier*, 2 E. & E. 755; 6 Jur. (N.S.) 887; 29 L. J. Q. B. 150; 8 W. R. 493; 2 L. T. (N.S.) 211; *Skillett* v. *Fletcher*, L. R. 1 C. P. 217; 35 L. J. C. P. 154; 12 Jur. (N.S.) 294; 14 W. R. 435; 14 L. T. (N.S.) 61 (affirmed, L. R. 2 C. P. 469); *Malling Union* (*Guardians of*) v. *Graham*, L. R. 5 C. P. 201; 39 L. J. C. P. 74; 22 L. T. (N.S.) 789; 18 W. R. 674; *Holme* v. *Brunskill*, 3 Q. B. D. 495; 47 L. J. Q. B. 610; 38 L. T. (N.S.) 838.

It is beyond the scope of the present work to enter into any detailed examination of the law relating to the discharge of sureties; a few of the cases may, however, be referred to. It would appear that the omission of a local board to carry out the regulations prescribed by the following sections will not release the sureties; nor a statement of them which does not amount to a warranty. *Benham* v. *United, &c., Assurance Company*, 7 Ex. 744. As to the effect of an inaccurate representation of the sums to be collected, see *Towle* v. *The National Guardian Assurance Company*, 3 Giff. 42; 30 L. J. Ch. 900, where it was held that a statement of the manner in which the accounts of the collector were to be checked, &c., did not amount to a warranty, and did not release the sureties in the event of its not being carried out. As to the effect of failure to give notice of former delinquencies of the officer, see *Lawder* v. *Simpson*, 21 W. R. 439.

It is a general principle that on a continuing guarantee for the honesty of a servant, if the master discovers that the servant has been guilty of dishonesty in the service, and, instead of dismissing the servant, chooses to continue him

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in his employment without the knowledge and consent of the surety, express or implied, he cannot afterwards have recourse to the surety to make good any loss which may arise from the dishonesty of the servant during the subsequent service. *Phillips* v. *Foxhall*, L. R. 7 Q. B. 666; 41 L. J. Q. B. 293; 27 L. T. (N.S.) 231; 20 W. R. 900; 37 J. P. 37; *Saunderson* v. *Aston*, L. R. 8 Ex. 73; 42 L. J. Ex. 64; 28 L. T. (N.S.) 35; 21 W. R. 293. See farther *Halifax Union* (*Guardians of*) v. *Wheelwright*, L. R. 10 Ex. 183; 44 L. J. Ex. 121; 32 L. T. (N.S.) 802; 23 W. R. 704, as to the liability of a treasurer when the clerk of the authority committed frauds upon them.

As to the discharge of the sureties by the laches of the creditor, see *Wulff* v. *Jay*, L. R. 7 Q. B. 756; 41 L. J. Q. B. 322; 27 L. T. (N.S.) 118; 20 W. R. 1030; *Mansfield Union* (*Guardians of*) v. *Wright*, 9 Q. B. D. 683.

As to the power of the sureties to put an end to their suretyship, see *Burgess* v. *Eve*, L. R. 13 Eq. 450; *Lloyds* v. *Harper*, 16 Ch. D. 290; *Beckett* v. *Addyman*, 9 Q. B. D. 783.

As to the effect of a stipulation in a bond by which the creditor undertook to prosecute the defaulting debtor, see *London Guarantee Company* v. *Fearnley*, 5 App. Cas. 911.

Officers to account.

195. Every officer and servant appointed or employed under this Act by a *local authority* (*a*) shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how, and to whom, and for what purposes such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts (*b*).

And every such officer or servant employed in the collection of any rate made under this Act shall, within *seven days* (*c*) after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct (*d*), deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them.

(*a*) Note the generality of these terms. The rural sanitary authority can require this account over and above what they can require in their capacity as a board of guardians.

(*b*) The requisition of course applies when the term of office has expired; but the local board will probably make some additional regulation for payments at other times. See the analogous provisions in the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 59, s. 21.

(*c*) This is a very precise direction, but one not very easy to be carried out universally. The local authority should, however, pay great attention to it. More confidence can be felt as to the due collection from a strict observance of the provision than from any amount or kind of guarantee.

(*d*) The local authority should require an account of the collection and deposit of the rates to be laid before them at short intervals. See section 250, *post*, as to the accounting of these officers to the auditor.

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Summary proceedings against defaulting officers.

196. If any officer or servant appointed or employed under this Act by a *local authority* (*a*)—

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within *five days* after written notice (*b*) in that behalf from the local authority to deliver up to the local authority all books papers writings property and things in his possession or power, relating to the execution of this Act, or belonging to such authority,

the *local authority* may complain to any justice, and such justice shall thereupon summon the party charged to appear before *a court of summary jurisdiction* (*c*).

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his *last known* place of abode or business (*d*), if it appears to the court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipt books papers writings property or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers receipts books papers writings property and things in respect of which the charge was made: Provided that a person shall not be imprisoned under this section for a period exceeding six months (*e*).

No proceedings under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever (*f*.)

(*a*) It is to be observed that these words apply to every local authority, and therefore this enactment will be available for a board of guardians acting as a rural sanitary authority.

(*b*) See sections 266–7, *post*, as to the authentication and service of this notice, which should be signed by the clerk.

(*c*) See the definition in section 4, *ante*, p. 15.

(*d*) As defaulting officers frequently abscond, this mode of service is very usual. By the *last place* of abode is meant the then present place of abode if the defaulter have any: the last which he had if he has ceased to have any. Per COLERIDGE, J., in *Reg.* v. *Evans*, 19 L. J. M. C. 151. The words of the text, however, are the *last known* place of abode. As to these words, see *Reg.* v. *Higham*, 7 E. & B. 557; 26 L. J. M. C. 116; see also *Reg.* v. *Brown*, 1 L. T. (N.S.) 529; 24 J. P. 5; *Reg.* v. *Smith*, L. R. 10 Q. B. 604; 23 W. R. 523; 39 J. P. 613; *Reg.* v. *Cambridgeshire* (*Justices of*), 44 J. P. 168.

(*e*) Under 11 & 12 Vict. c. 63, s. 39, there was no limitation of time for the imprisonment; so that the prisoner, if obdurate, might have had to remain in

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prison for his life; but if he rendered an account and could not pay the balance, he could have been committed to prison for three months only. This distinction does not now remain. Whether the provision be imperative upon the justices may be questioned. Upon a similar provision in 17 Geo. 2, c. 38, s. 2, the Court of Queen's Bench held that it was in the discretion of the justices whether they would commit to gaol an overseer who neglected to account. *Reg.* v. *Norfolk* (*Justices of*), 4 B. & Ad. 238.

The failure to render an account or give up books is a continuing offence, and therefore the limitation against proceedings contained in section 252, *post*, will not apply. Indeed, the order of justices under this section so far as it applies to the delivery of books is not penal, but only in the nature of a distress. See *Mayer* v. *Harding*, 17 L. T. (N.S.) 140; 32 J. P. 421. The neglect to pay over the moneys is a substantive offence, and to this section 252 may apply.

The Debtors Act, 1869 (32 & 33 Vict. c. 62) does not operate to prevent the imprisonment of the defaulter. See *Reg.* v. *Pratt*, L. R. 5 Q. B. 176; 39 L. J. M. C. 73; 18 W. R. 626; S. C. *sub nom. Ex parte Cole*, 21 L. T. (N.S.) 750; 34 J. P. 150. It has been decided that a discharge in bankruptcy operates to prevent an auditor from enforcing his certificate of a sum due from an overseer, the sum being a debt and payable in the bankruptcy although there were special means provided for enforcing payment, viz., by distress and imprisonment. *Reg.* v. *Martin* or *Master*, L. R. 4 Q. B. 285; 38 L. J. M. C. 73; 19 L. T. (N.S.) 733; 17 W. R. 442; 10 B. & S. 42.

It may be a serious question whether this section is affected by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Section 6 of that Act provides that where by any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and recoverable accordingly. Section 35 provides that a person shall not be imprisoned in respect of a court debt except after proof of means on judgment summons. The proceedings to recover money under this section in the text seem to fulfil all the requirements of section 6 of the Act of 1879, and if so that section would seem to supersede the procedure prescribed in this text.

(*f*) It is a question not yet settled by authority whether a committal to prison will operate as a release of the defaulter's own liability. See the Debtors Act, 1869, s. 5, which is incorporated by section 35 of the Summary Jurisdiction Act, 1879, and the case of *Evans* v. *Wills* (45 L. J. Q. B. 420; 24 W. R. 883; 40 J. P. 552), decided with reference to that section.

Mode of Conducting Business.

Urban authority to provide offices.

197. Every urban authority *shall* (*a*) from time to time provide (*b*) and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act.

(*a*) Note that these words are imperative; nevertheless the nature of the provision must leave some discretion to the authority. The enactment is confined to *offices*, and does not embrace a town-hall.

(*b*) Section 175, *ante*, p. 203, enables the urban authority to procure the requisite site for the premises. If the charge for the providing of the offices be heavy, a loan can be obtained for the purpose, as to which see sections 233—244, *post*.

Proceedings, &c., of urban authority

198. Where an urban authority are the council of a borough they shall, subject to the provisions of this Act (*a*), exercise and execute their powers authorities and duties under this Act according to the

laws for the time being in force with respect to municipal corporations in England (*b*). Sect. 198.

being the council of a borough.

(*a*) Query, what are the provisions referred to?

(*b*) An opinion formerly prevailed that where corporate boroughs adopted the previous Acts relating to public health and local government, and became local boards of health a new body was created, so that the corporation filled two separate and distinct functions. This opinion was to some extent supported by *Reg.* v. *Gloucester*, *ante*, p. 221, and *Anthony* v. *Brecon Market Company*, L. R. 7 Ex. 399; 41 L. J. Ex. 201; 26 L. T. (N.S.) 979; 21 W. R. 27. But in *Andrews* v. *Ryde* (*Mayor, &c., of*), L. R. 9 Ex. 302; 43 L. J. Ex. 174; 23 W. R. 58, it was decided that they were not two distinct bodies, and that the corporate body was the local board, or, in other words, that the local board had no existence, so that every contract, whether with the corporation acting as a local board or with the corporation alone, was essentially made with the corporation. Hence no separate seals were required, nor separate liability incurred. See also *Pedder* v. *Preston* (*Mayor, &c., of*) 12 C. B. (N.S.) 535; 31 L. J. C. P. 291; 10 W. R. 773; 6 L. T. (N.S.) 540; 9 Jur. (N.S.) 496, which was in conformity with that decision.

The proceedings at the meetings of the council of a borough are regulated by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 22, and Schedule 2.

199. Every urban authority (not being the council of a borough) shall hold an annual meeting (*a*), and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act. Meetings, &c., of urban authority not being the council of a borough.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and *any improvement commissioners* (*b*) may, if they think fit, adopt all or any of such rules.

(*a*) This meeting must be held as soon as convenient after the 15th April in each year. See Schedule I., rule 11, *post*.

(*b*) See the definition in section 4, *ante*, p. 4.

200. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes *of this Act* which in the opinion of such authority would be better regulated and managed by means of a committee (*a*): Provided that a committee so appointed shall in no case be authorized to borrow any money, to make any rate, or to enter into any contract (*b*), and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it. Power of urban authority to appoint committees.

(*a*) The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 36, required the local board to approve of the acts of the committee, but there was a doubt as to the effect of this approval. This requisition is now removed. But

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the local authority may restrain the committee from acting wholly or partially without their sanction, and the proviso contains a statutory restraint upon the committee as to sundry matters of importance.

When under the previous Acts a local board appointed a committee and afterwards passed a resolution approving the minutes of the committee resolving that certain streets should be paved, notices were given, and on default of the owners the board passed a resolution approving a resolution of the committee that the work should be done by the surveyor, it was held that none of these acts required the statutory approval of the council, as all the acts were acts of the board on the recommendation of the committee and therefore did not require to be approved. *Barnsley Local Board* v. *Sedgwick*, L. R. 2 Q. B. 185; 36 L. J. M. C. 65; 15 L. T. (N.S.) 569; 8 B. & S. 202; 15 W. R. 514; 31 J. P. 165.

Where a board constituted by an Act of Parliament is authorized by it to delegate any of its powers to a committee, the powers so conferred by the committee must be exercised by them acting in concert; and it is not competent to the committee to apportion amongst themselves the duties as delegated to them; and one of them acting alone pursuant to such apportionment, cannot justify the acts under the Acts of Parliament. *Cook* v. *Ward*, 2 C. P. D. 255; 36 L. T. (N.S.) 893; 25 W. R. 593; 41 J. P. 439.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 22, enables a town council to appoint out of their own body a committee "for any purposes which in the opinion of the council would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval." It appears to be doubtful whether such approval is necessary in the case of a committee appointed *for the purposes of* this Act; but probably it is not necessary.

(*b*) In *Eaton* v. *Basker*, *ante*, p. 202, a contract was entered into by a committee, and it was held that the council were bound by the contract as having been made by their agents, but that as it was made with the committee as such and not with the members of it individually, the latter were not personally liable upon it.

Power of rural authority to delegate their powers and duties to a committee.

201. A rural authority may, at any meeting specially convened for the purpose, delegate for the current year of their office *all their powers* (*a*) to a committee consisting wholly of their own members; provided that *one third* at least of such committee shall consist of *ex-officio* guardians (*b*), but in case an adequate number of such *ex-officio* guardians does not exist, then the number deficient shall be made up of elected guardians; and any such committe shall have the powers by this Act vested in the rural authority by which it was formed, and *shall be deemed to be* during such year of office as aforesaid *the rural authority* of the district.

(*a*) It might have been presumed that the rural authority might delegate *part* of their powers, and not all, but the last part of the section negatives that view.

(*b*) These must be *ex-officio* guardians who are not disqualified by residence in an urban sanitary district. See section 9, sub-section (1), *ante*, p. 20.

Power of rural authority to form

202. A rural authority (*including* any committee so formed as aforesaid (*a*)) may, at any meeting specially convened for the purpose, form for any *contributory place* (*b*) within their district, a

parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place (*c*), and qualified in such other manner (if any) as the authority forming such parochial committee may determine. Sect. 202. parochial committees.

A rural authority (including any committee so formed as aforesaid (*d*)) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee (*e*).

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place (*f*).

A parochial committee shall be deemed to be the *agent of the authority* (*g*) which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

(*a*) This parenthesis seems to signify that if a rural authority has formed a committee under the last section they have parted with all their powers, and the committee can appoint this parochial committee.

(*b*) See section 229, *post*, as to what is a contributory place.

(*c*) No amount of rate is required. The authority may prescribe some other qualification, but it is not apparent what that qualification shall be. Residence in the place or within a prescribed distance might be one qualification.

(*d*) It is presumed that this must be rendered *reddendo singula singulis*; so that the parochial committee can be dealt with only by the authority which constituted it.

(*e*) Hence the committee can make no appointment of officers. The local authority can only appoint officers for the whole of their district, though probably they can assign to them duties to be performed only in the district of the parochial committee. It will be seen hereafter that the salaries of all officers form part of general expenses.

(*f*) These words raise some difficulty. If the strict rule of agency be followed, the committee cannot act except according to the powers delegated to them by the authority, and, if they exceed them, they must obtain a ratification of their act. But probably a greater latitude of action is proposed to be exercised by them. They can report on the state of their district, recommend

Note to Sect. 202. works and supervise the execution of them; they can inspect, admonish, and stimulate for the removal of nuisances. It will be observed that though they may incur expenses, they can only do so when expressly authorized, and then only within the prescribed limit.

Casual vacancies in committees may be filled.

203. Any casual vacancy occurring by death, resignation, disqualification, or otherwise, in any committee *may* be filled up within *six weeks*, by the authority which formed such committee, out of qualified persons.

It is presumed that the limitation of time contained in this section is directory only. See *R.* v. *Sparrow*, 2 Str. 1123; *R.* v. *Norwich* (*Mayor of*), 1 B. & Ad. 310; *R.* v. *Denbighshire*, 4 East, 142; *Caldow* v. *Pixell*, 2 C. P. D. 562. From these and similar cases a general rule may be deduced that when the time prescribed for the performance of an act is not essential to its validity, and there is no provision for non-compliance, the limitation of time is merely directory.

Meetings and proceedings of committees.

204. Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee), in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

Inspectors may attend meetings of certain authorities.

205. Inspectors of the Local Government Board (*a*) may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board (*b*).

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

(*a*) See section 296, *post*, and 34 & 35 Vict. c. 70, s. 3, in the Appendix.

(*b*) They have no power to take part in the proceedings so as to vote on any matter. They can hear what passes and can advise when consulted. They can also convey any message from the Local Government Board. But even these proceedings are prohibited at Oxford.

As to the definition of local board, see section 4, *ante*, p. 3.

Local authority to report.

206. Every *local authority* shall make *an annual report*, in such form and at such time as the Local Government Board may from time to time direct, of all works executed, and of all sums received and disbursements made by them under and for the purposes of this Act during the preceding year, and shall send a copy to the Local Government Board: An urban authority shall also publish a copy in some local newspaper circulating in their district.

The General Order for Accounts, 22nd March, 1880, prescribes a form of financial statement to be prepared by the board in accordance with the provisions of the District Auditors Act, 1879, s. 3. This statement has to be sent to the Local Government Board, and appears to take the place of the return required by this section.

PART VI.

RATING AND BORROWING POWERS, &c.

Expenses of Urban Authority and Urban Rates.

Sect. 207

Mode of defraying expenses of urban authority.

207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for (*a*), shall be charged on and defrayed out of the *district fund* and *general district rate* leviable by them under this Act (*b*), subject to the following exceptions; (namely),

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts (*c*) were at the time of the *passing of this Act* payable out of the *borough fund or borough rate* (*d*), then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being *improvement commissioners* (*e*)) in the execution of the Sanitary Acts were at the time of *the passing of this Act* payable out of any rate in the nature of a general district rate (*f*) leviable by them as such commissioners throughout *the whole* of their district (*g*), then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of *the passing of this Act* the expenses incurred by an urban authority in the execution of *certain purposes* of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the *other purposes* of the said Acts were payable out of a rate or rates leviable by that authority throughout *the whole* of their district for paving, sewering, or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes res-

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pectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid (*h*).

(*a*) See the saving in section 319, *post*, as to special district rates heretofore made, and the charges thereon.

By a local Act (58 Geo. 3, c. lxxxi.), certain persons therein mentioned were appointed commissioners for the purpose of paving the footways, and cleansing, lighting, and watching the streets in the town of Monmouth. By section 59 "the said commissioners shall and are hereby authorized and required once in every year to rate and assess any sum not exceeding one shilling in the pound, upon or in respect of all houses, &c., being within the limits of the said town of Monmouth." By section 67, "all and every person or persons paying the rates and assessments hereby authorized to be levied within the said town, shall be, and they and every of them is and are hereby exempted and discharged from all charges and expenses of paving, lighting, watching, cleansing, or fencing off any part or parts of the footways and crosspaths of the said town and borough." By the Public Health Act, 1872, the borough of Monmouth (within which was the town of Monmouth), was created an urban sanitary district, and the mayor and corporation the urban sanitary authority. By section 16, all expenses incurred or payable by an urban sanitary authority under the Sanitary Acts, were to be defrayed in the case of the council of a borough out of the borough fund or borough rate. By the amending Act of 1874, all the powers and duties of the commissioners under the said local Act, relating to any objects or purposes were transferred to the council. After the passing of the present Act, the town council, as the urban sanitary authority for the borough, made a general borough rate to meet expenditure which included the paving, lighting, and cleansing of the town. A ratepayer who occupied a house within the borough, but outside the town of Monmouth, appealed on the ground that the rate was made in part for raising money towards defraying the expenses of carrying the Monmouth Rating Act into execution. It was held that the rate was invalid. *Monmouth* (*Mayor, &c., of*) v. *Monmouth* (*Overseers of*), 38 L. T. (N.S.) 612

As to the misapplication of funds and illegal charges, see the note to section 218, *post*.

(*b*) See section 219, *post*, p. 256.

(*c*) See the definition in section 4, *ante*, p. 15.

(*d*) This means legally payable. In some boroughs owing to the difficulty in the interpretation of 35 & 36 Vict. c. 79, the expenses had not been charged in point of fact to the borough fund or rate; in some other cases they had been wrongfully charged in the manner provided by this section. These different erroneous charges were rendered valid by section 338, *post*, but that section has been repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39). It is therefore necessary in some cases to determine whether before the Act the expenses in question were or were not legally payable out of the borough fund or rate. For an instance in which they were held not to be so payable, see *Walsall* (*Overseers of*) v. *The London and North Western Railway Company*, cited in the note to section 211, *post*.

As to the borough fund and rate and the charges which may legally be paid out of them, see the Municipal Corporations Act, 1882, sections 139, 159, and Schedule V.

(*e*) See the definition in section 4, *ante*, p. 4.

(*f*) See section 210, *post*, p. 235, as to what is a general district rate.

(*g*) Note these words. They remove an ambiguity which arose upon 35 & 36 Vict. c. 79, s. 16, in the proviso; and it must be observed also that the reference is as to what was legally payable, and not as to what had been so charged in fact.

(*h*) This paragraph applies to cases where there was a local Act in force in the district, or where the borough had adopted some of the provisions of 11 & 12 Vict. c. 63, or 21 & 22 Vict. c. 98. The charges for the future are to continue to be charged in like manner as they were legally charged before the passing of the Act. Note to Sect. 207.

208. Where at any time of *the passing of this Act* the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts (*a*), the Local Government Board may, on the application of such authority (*b*), or of any ten persons rated to the relief of the poor within the district (*c*), declare by *provisional order* (*d*) that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways (*e*). Power in certain cases by provisional order to alter mode.

(*a*) See the definition in Schedule V., Part I., *post*. These payments were generally charged under a local Act.

(*b*) This application must be made in writing, which should be on foolscap folio paper, and in the case of the authority should be signed by their clerk. It need not be sealed. In other cases the signatures should if possible be attached at the foot of the written application.

(*c*) No specific amount of rating is necessary.

(*d*) See section 297, *post*, as to the provisional orders of the Local Government Board.

(*e*) See section 216, *post*.

General District Rate.

209. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the *district fund* (*a*): a separate account called "the district fund account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper (*b*). District fund account.

(*a*) Though the treasurer is to keep the account of the fund, the authority should also keep a proper notice of it in their ledger.

(*b*) Note that in this matter the authority appears to have an absolute discretion, though the next section only enables a district rate to be made when the district fund is insufficient to meet the expenses.

210. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban Making general

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authority (*a*) shall from time to time, as occasion may require, make by writing *under their common seal* (*b*), and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates."

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate (*c*): in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded (*d*).

Public notice (*e*) of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a *statement* (*f*) of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and *at least* (*g*) seven days previously thereto (*h*); but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given (*i*).

(*a*) Though it is not desirable that an urban authority should act in levying rates if not duly constituted, it is nevertheless very doubtful whether the legality of the election can be tried in resisting a district rate levied by them. See Sched. II., rule 70, *post*, and *Howitt* v. *Manful*, 6 E. & B. 736; 25 L. J. Q. B. 411; 2 Jur. (N.S.) 883; 20 J. P. 387. In that case the board had required the justices to issue their distress warrant, upon which distress the action of replevin was brought (as to this see *Ex parte The Grumpsall Local Board*, 20 J. P. 771). The point was not absolutely decided, for the court held that the local board were legally constituted. It had been held that the validity of the election of members of a board of guardians could not be questioned upon a *mandamus* to enforce a contribution for the relief of the poor. *Reg.* v. *St. Andrew, Holborn* (*Guardians of*), 10 A. & E. 736.

(*b*) These words remove a difficulty raised in *Reg.* v. *The Worksop Local Board*, 5 B. & S. 951; 34 L. J. M. C. 220; 11 Jur. (N.S.) 1015; 12 W. R. 710; 10 L. T. (N.S.) 297; 28 J. P. 596. The members need not now sign the rate.

The rates which can now be levied by the urban sanitary authority under this Act are the general district rate, the water rate, the highway rate, the private improvement rate, and, perhaps, in certain special cases, a burial rate. See Sched. III., Part III., *post*.

Care must be taken not to provide in the general district rate for expenses otherwise chargeable. In *Dryden* v. *Putney* (*Overseers of*), *ante*, p. 154, the expenses of paving a footpath had been improperly charged to the general rate, and the board were afterwards ordered to restore to the general rate the sum so charged, and to levy the amount upon the owners liable. *Attorney-General* v. *Wandsworth District Board of Works*, 6 Ch. D. 539; 64 L. J. Ch. 771.

(*c*) One general rate may be made to include both past and future expenses if the amount of each is shown in the estimate. A question was raised in *Reg.* v. *Worksop Local Board*, *supra*, as to the effect of insufficiently setting

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out the sums required in respect of each of the purposes for which the rate was made, but the Court did not decide the point.

If the rate purport to be made for the purposes of the Act, it would seem that it is valid in itself, and that any objection with reference to retrospectiveness would properly arise upon payment made by the board. The effect of the section is, therefore, to legalize retrospective payment out of the rate, provided the charges or expenses have been incurred within six months before the making of the rate. No validity is given to payments in respect of debts incurred beyond that time, except when the charges are expressly authorized by this or some previous Act. Since the decision in *Waddington* v. *City of London Union*, E. B. & E. 370; 28 L. J. M. C. 113; 22 J. P. 755; 5 Jur. (N.S.) 242, it will, perhaps, be a good ground of appeal against the rate that it is to be applied to pay debts due beyond the limited time.

In determining what is the meaning of the term *charges*, reference should be made to *Reg.* v. *Rotherham Local Board*, 8 E. & B. 906; 4 Jur. (N.S.) 261; 27 L. J. Q. B. 156; 22 J. P. 641. There it was held that a judgment recovered against a local board was a charge, and that the satisfaction thereof having been postponed by mutual agreement for a definite period, the six months did not begin to run until the expiration of that period, so that a rate could be levied within six months therefrom. And as the judgment was not satisfied, the court issued a *mandamus* to the local board to make a rate to discharge the judgment.

Where certain commissioners were turned into a local board, having incurred certain liabilities which, by the order constituting the local board, were charged upon their property, it was held that the board were bound to make a rate to discharge this liability, notwithstanding the lapse of this period. *Ward* v. *Lowndes*, 1 E. & E. 940; 6 Jur. (N.S.) 247; 29 L. J. Q. B. 40; 8 W. R. 81; 1 L. T. (N.S.) 268; 23 J. P. 357. The ground of this decision was that the debt was not a charge incurred by the board within the meaning of the section, and that the board had power, under the order declaring the debt to be a charge on the rates, to levy a rate to defray it without limitation of time.

A plaintiff in his declaration prayed a writ of *mandamus* to compel a local board to levy a rate and pay him the amount awarded. The damage for which compensation was claimed occurred more than six months before the application, but the award was made within six months. The board resisted the claim on the ground that the expenses for which it was sought to compel them to levy the rate had not been incurred within the six months prescribed by the corresponding section of the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 89). It was held that the plaintiff was entitled to his writ, for that the next six months must be reckoned from the time that the award was made. *Ringland* v. *Lowndes*, 15 C. B. (N.S.) 173; 33 L. J. C. P. 25; 12 W. R. 168; 9 L. T. (N.S.) 479.

A local board having erroneously made a special rate, B. paid his *quota* before the error was discovered. Five years afterwards he commenced an action against the board to recover the money back, and obtained a judgment, and afterwards sued them on the judgment, demanding, in his declaration, a *mandamus* to them to make and levy a rate for the purpose of satisfying the judgment. Held, assuming the debt so contracted by the board to be a *charge*, B. was not entitled to a *mandamus* to levy a rate as the original action was not commenced within six months after the charge was incurred. *Burland* v. *Kingston-upon-Hull Local Board*, 3 B. & S. 271; 9 Jur. (N.S.) 275; 32 L. J. Q. B. 17; 11 W. R. 33; 7 L. T. (N.S.) 316; 27 J. P. 230. In the same case it was decided that it is no answer to an application for a *mandamus* to levy a rate in such a case that the board may possibly have funds to pay the amount required, and that a fresh rate may not be necessary.

For an instance of the claim of a *mandamus* being inapplicable, see *Bush* v. *Beavan*, *ante*, p. 221.

Where a judgment was recovered against a local board in an action commenced after the expiration of six months from the accrual of the right of

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action, and a *mandamus* was sued out within six months to enforce the judgment, the Court of Queen's Bench held that a peremptory writ might be granted if sufficient cause were shown to excuse the delay in commencing the action. *Worthington* v. *Hulton*, L. R. 1 Q. B. 63; 6 B. & S. 943; 12 Jur. (N.S.) 73; 35 L. J. Q. B. 61; 14 W. R. 632; 13 L. T. (N.S.) 463; 30 J. P. 22. Referring to this case and that of *Reg.* v. *Rotherham Local Board*, *ante*, Lord BLACKBURN, in *Julius* v. *The Bishop of Oxford*, 4 App. Cas., at p. 243, said: "Though the giving of a power is *primâ facie* merely enabling the donee to act, and so may not inaccurately be said to be equivalent to saying he may act, yet if the object of giving the power is to enable the donee to effectuate a right, then it is the duty of the donee of the power to exercise the power when those who have the power call upon him to do so. Thus, in 11 & 12 Vict. c. 63, s. 89 (see *ante*), the words are, 'The local board *may* make rates prospectively,' &c.; yet on the application of a judgment creditor a *mandamus* will go to compel the making of a rate for the purpose of satisfying a judgment within six months after the judgment has been obtained." These decisions seem to afford a means by which a local board may evade the limitation imposed by the statute, when they are desirous of paying the debt.

In *Swire* v. *Burley Local Board*, 33 L. T. (O.S.) 222, a rule for a *mandamus* to levy a rate for the payment of a debt was made absolute when the work, payment for which was claimed, was done in 1857, but the judgment was not obtained until 1859, ERLE, J., remarking that there had been no wilful delay, but the judgment had been delayed by misfortune. In this case, however, the writ had been issued within six months from the completion of the work.

But where through the delay of the plaintiffs it was necessary for the defendants, a local board, to have the authority of a *mandamus* to justify them in paying a sum of money, the court refused to make a rule absolute calling on them to pay the costs of the *mandamus* (*Reg.* v. *Burleigh Local Board*, 1 L. T. (N.S.) 92). BLACKBURN, J., said: "In this case judgment was not signed until two years after verdict; and that circumstance alone was sufficient to render it desirable that the local board should be justified in making the payment by the authority of a *mandamus*. There has been a delay of two years, and a great part of that time has not been satisfactorily accounted for."

An incorporated body having raised money under statutory powers by debentures, issued some of their debentures to one of their own body in payment of goods supplied by him, such a transaction being illegal under the statute by which they were constituted a corporate body. Held, that in an action by the executors of an innocent holder for value of such securities, the same having been transferred to him from the original mortgagee in the manner provided by the statute, they were estopped from setting up as a defence the original illegality of the transaction, and that under the Common Law Procedure Act, 1854, s. 68, the writ was in the proper form in praying for a *mandamus* to compel them to apply the money in their hands raised under the powers of the statute and applicable to that purpose, and that it was not necessary that the *mandamus* should direct the defendants to levy a rate for the purpose of satisfying the plaintiff's demand. *Webb* v. *Herne Bay Commissioners*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221; 22 L. T. (N.S.) 745; 19 W. R. 241.

It ought to be added that the writ of *mandamus*, being a prerogative writ, is not a writ of right. The granting of it is therefore discretionary. *Reg.* v. *All Saints', Wigan*, 1 App. Cas. 611; 35 L. T. (N.S.) 381; 25 W. R. 128. The application for it must be made to the Queen's Bench Division. Per BRETT, L. J., in *Glossop* v. *Heston Local Board*, *ante*, p. 34.

It is to be observed that this section applies only to urban authorities. With respect to rural authorities and the payment of their debts, see 22 & 23 Vict. c. 49, the effect of which is stated, *ante*, p. 22; and see *Baker* v. *Billericay Union*, 2 H. & C. 642; 33 L. J. M. C. 40. As to when a rate is bad as being retrospective, see *Jones* v. *Johnson*, 5 Ex. 862; 15 J. P. 21; *Woods* v. *Reed*,

2 M. & W. 777. But, as above stated, this objection must be taken on appeal against the rate. **Note to Sect. 210.**

(*d*) This provision was introduced into 21 & 22 Vict. c. 98, s. 54, because the law officers of the Crown had advised, in 1854, that if a rate were quashed on appeal, the six months' period was not extended, and that any rate of a retrospective character would still be limited to that period independently of its date. But it is not easy to see how the clause is to be worked out. It appears to depend upon a result not ascertained at the time when the rate is made. It is impossible to declare that subsequent events can render an absolute act which was legally valid when done, such as the making of the rate, invalid at the time of its being made. But the delay caused by the appeal, and litigation arising out of it, may affect the legality of payments out of the rate.

(*e*) There is no precise direction as to how this notice is to be published, but it will be best to follow the course adopted with regard to all notices of a public nature required to be given by the authority.

(*f*) It is by no means clear what is meant by this statement; probably it is the draft of the proposed rate, which, being open to inspection, may be corrected, if erroneous, before it is sealed.

(*g*) These words mean that both days are to be exclusive. *R.* v. *Shropshire JJ.*, 8 A. & E. 173; *Young* v. *Higgon*, 6 M. & W. 49.

(*h*) It is not apparent for what object this notice is to be given, as no ratepayer can interfere to prevent the rate from being made, unless, indeed, the matter be of sufficient importance to justify an application to the High Court of Justice for an injunction.

(*i*) But if it be shown that the notice was *not* given, the question will arise whether this notice is a necessary condition precedent, or whether this provision is directory only. It will be seen hereafter (section 222, *post*) that the publication of the rate is not a condition precedent, and there are no words of avowance in the text in case the notice is not given.

211. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect (*a*); (namely), Assessment, &c. of general district rate.

(1.) General and district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable (*b*) to any rate for the relief of the poor, and shall be assessed on the *full net annual value* (*c*) of such property, ascertained by the *valuation list* (*d*) for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions regulations and conditions; (namely),

(*a.*) The *owner* (*e*), instead of the occupier, *may at the option of the urban authority* be rated in cases—

Where the *rateable value* (*f*) of any *premises* liable to assessment under this Act does not exceed the sum of *ten* pounds: or

Where any premises so let are liable to *weekly* or *monthly tenants*; or

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Where any premises so liable are let in *separate apartments*, or where the *rents* become payable or are collected at any shorter period than *quarterly* (*g*):

Provided that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than *two-thirds* nor more than *four-fifths* of the net annual value; and where such reduced estimate is in respect of *tenements* (*h*) whether occupied or unoccupied, then such assessment may be made on *one half* of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers (*i*):

(*b.*) The owner of any *tithes*, or of any *tithe commutation rentcharge* (*k*), or the occupier of any land used as arable meadow or pasture ground only (*l*), or as *woodlands* (*m*), market gardens, or nursery grounds, and the occupier of *any land covered with water* (*n*), or used only as a canal or towing-path for the same (*o*), or as a *railway* (*p*) constructed under the powers of any Act of Parliament (*q*) for public conveyance, shall be assessed in respect of the same in the proportion of *one fourth part* only of such net annual value thereof:

(*c.*) If within any urban district or part of such district any kind of property is exempted from rating by *any local Act* in respect of all or any of the purposes for which general district rates may be made under this Act, *the same kind of property* (*r*) shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any general district rates under this Act unless the Local Government Board by *provisional order* otherwise direct (*s*).

(2.) If at any time of making any *general district rate* any premises in respect of which the rate may be made are unoccupied (*t*), such premises shall be included in the

rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied; and if any such premises are afterwards occupied during any part of the *period* (*u*) for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made: Sect. 211.

(3.) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the *period* for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier (*v*); and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable:

(4.) The urban authority *may* (*w*) divide their district or any *street* (*x*) therein into *parts* (*y*) for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act: Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them *in a fair and equitable manner* (*z*).

(*a*) In *South Wales Railway Company* v. *Swansea Local Board* (*infra*), Erle, J., commenting upon the corresponding provisions of the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 88), said:—"The general scheme of the enactment is that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at a lower rate, and the class of property

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most benefited is that which is occupied immediately for the purpose of residence, and the kinds of property not so occupied are not to be rated so highly."

(*b*) Reference must be made to text books on the law of rating in order to determine what properties are by law assessable to the poor rate. The principal exemptions from rating are Crown property, such as Royal Palaces, the Houses of Parliament, Government offices such as the Post Office, the Horse Guards, and the Admiralty, *Leith Harbour, Commissioners of*, v. *The Inspector of the Poor*, L. R. 1 H. L. Sc. 17; local post offices, *Smith* v. *Birmingham* (*Guardians of*), 7 E. & B. 483; 26 L. J. M. C. 105; 3 Jur. (N.S.) 769; bridges in the occupation of the commissioners of works, *Reg.* v. *McCann*, L. R. 3 Q. B. 141; 37 L. J. M. C. 123; 16 W. R. 985; 19 L. T. (N.S.) 115; 32 J. P. 579; barracks, *Lord Amhurst* v. *Lord Sommers*, 2 T. R. 372; prisons, *Gambier* v. *Lydford* (*Overseers of*), 3 E. & B. 346; 23 L. J. M. C. 69; 18 J. P. 456; 18 Jur. 352; county buildings such as courts of assize and quarter sessions, judges lodgings, police stations, &c., *Reg.* v. *St. Martins, Leicester*, L. R. 2 Q. B. 493; 8 B. & S. 536; 36 L. J. M. C. 99; 16 L. T. (N.S.) 625; 15 W. R. 1036; 31 J. P. 613; county courts, *Hodgson* v. *Carlisle Local Board*, 8 E. & B. 116; 4 Jur. (N.S.) 160; 21 J. P. 421, &c. There are also exemptions by virtue of statutes, such as personal property under 3 & 4 Vict. c. 89, an Act which is renewed annually; turnpike tolls, under 3 Geo. 4, c. 125, s. 51, and 4 Geo. 4, c. 95, s. 31; churches and places of religious worship, under 3 & 4 Wm. 4, c. 30; Sunday and ragged schools, under 32 & 33 Vict. c. 40; properties occupied by societies instituted for purposes of science, literature, or the fine arts exclusively, under 6 & 7 Vict. c. 36, and a few others of less importance.

It is not now a ground of exemption from rating that the property is occupied for public purposes. *Mersey Docks and Harbour Board Trustees* v. *Cameron*, 11 H. L. Cas. 443; 20 C. B. (N.S.) 56; 35 L. J. M. C. 1; 11 Jur. (N.S.) 746; 13 W. R. 1069; 12 L. T. (N.S.) 643.

Upon similar words in a local Act, it was held that the *owner* of unoccupied and unfurnished premises was not rateable. *Sligo* (*Corporation of*) v. *Wynne*, 7 Ir. R. C. L. 465. A workhouse was held to be rateable by virtue of similar words in 21 & 22 Vict. c. 98, s. 55. *Toxteth Park* (*Guardians of*) v. *Toxteth Park Local Board*, 30 L. J. M. C. 154; 1 B. & S. 167; 4 L. T. (N.S.) 283; 9 W. R. 691; 25 J. P. 645.

(*c*) See the definition of full net annual value in section 4, *ante*, p. 8.

(*d*) Though there is no further description of this list, the section must refer to the valuation list made by the union assessment committee, which alone shows the annual value of properties assessed to the poor rate. The statutes in force with reference to the making and revising of the valuation lists, are the Union Assessment Committee Acts, 1862 and 1864, 25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39. The Local Government Act, 1848, 21 & 22 Vict. c. 98, s. 56, enabled the local board at their own option to have a valuation made for themselves, but this option is taken away and the valuation list must now be followed, or the poor rate in the very few cases when there is no such list. The term *valuation list* has acquired a technical meaning.

It will be seen that section 221, *post*, provides for the amendment of the rate when made.

(*e*) See the definition of owner in section 4, *ante*, p. 6. 59 Geo. 3, c. 12, s. 19, and 13 & 14 Vict. c. 99, contained provisions with regard to the assessment of *owners* to the poor rate. The latter of those Acts, however, has been repealed by 32 & 33 Vict. c. 41, s. 6, so far as it relates to the poor rate (and see 45 & 46 Vict. c. 27, as to highway rates, and the former has been to a large extent superseded by the same Act. It is to be noticed that when the urban authority determine to put in force this provision, the owner is to be *rated*. The statute does not require the occupier to be rated and enable the owner to pay the rate less a commission as in 32 & 33 Vict. c. 41, s. 3.

The authority may, as it seems, select particular owners to be rated instead of the occupiers, and omit others. The words of the section give the authority a discretion in this respect.

Note that this provision applies only where there is an occupier: per Lord COLERIDGE, C. J., in *Reg.* v. *Barclay, infra.* **Note to Sect. 211.**

(*f*) This appears to mean the *net rateable value* as distinguished from the *gross estimated rental*. See afterwards in the section, and see also *ante*, p. 8. Refer also to section 4, *ante*, p. 6, for the definition of *premises*.

(*g*) It is to be observed that where the premises are let to weekly or monthly tenants, or in separate apartments, there is no limit as to the annual value, and in some cases the authority may prefer to rate the actual occupiers instead of the owners. The provisions of 59 Geo. 3, c. 12, s. 19, may be usefully compared with those in the text, and the decision of the House of Lords upon the former Act may be referred to. *West Ham* (*Churchwardens of*) v. *Iles*, 8 App. Cas. 386; 52 L. J. Q. B. 650; 49 L. T. (N.S.) 205; 31 W. R. 928; 47 J. P. 708.

(*h*) Note that the word *tenements* is here used in place of *premises*, but probably there is no difference in the meaning of the enactment. See *New River Company* v. *St. Pancras* (*Vestry of*), 45 J. P. 75.

(*i*) A discretionary power is here given to the urban authority to rate an owner in respect of tenements whether occupied or unoccupied; but when the owner is so rated the authority have no discretion to rate him at an amount other than one-half the rateable value. *Reg.* v. *Barclay*, 8 Q. B. D. 486; 51 L. J. M. C. 47; 46 L. T. (N.S.) 335; 30 W. R. 672; 46 J. P. 693; (C. A.) affirming the decision of the Queen's Bench Division, 8 Q. B. D. 306; 51 L. J. M. C. 27; 46 L. T. (N.S.) 102; 30 W. R. 472; 46 J. P. 167.

The allowances made under 32 & 33 Vict. c. 41, ss. 3, 4, in the case of a poor rate are different.

(*k*) For the proper mode of rating tithe rentcharge to the poor rate, see *Reg.* v. *Goodchild* and *Reg.* v. *Hawkins*, 27 L. J. M. C. 233; E. B. & E. 1; 22 J. P. 148; overruled in some respects by *Reg.* v. *Sherford*, L. R. 2 Q. B. 503; 36 L. J. M. C. 113; 8 B. & S. 596; 16 L. T. (N.S.) 663; 15 W. R. 1035; 31 J. P. 629; and *Lawrence* v. *Tolleshunt Knights*, 31 L. J. M. C. 148; 2 B. & S. 533; 10 W. R. 620; 26 J. P. 422; 8 Jur. (N.S.) 866. 14 & 15 Vict. c. 50, which is not repealed by this Act, provided that tithes, tithe rentcharges, moduses, compositions real, and other payments in lieu of tithes should be assessed under 11 & 12 Vict. c. 63, s. 88, as and in the same proportion of their annual value as land used as arable, meadow, or pasture land only.

(*l*) For a case where there was an exemption of all arable land exceeding two acres under a local Act, and when there was therefore a conflict between the provisions of the local Act and the text, see *Walton* (*Commissioners of*) v. *Walford*, cited in the note to section 227, *post*.

Land occupied by a booth used at the time of races, but not otherwise used, was held not to fall under any of these exemptions, and was therefore to be assessed at its full value. *Reg.* v. *Briscoe*, 20 J. P. 52.

(*m*) Probably the word *woodlands* will apply to orchards. It is singular that the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 56, contained the provision as to the rating of woodlands, although such property was not assessable to the poor rate except when there were saleable underwoods, before 37 & 38 Vict. c. 54. The statute in section 12 enacts that "the provisions of the Sanitary Acts as defined by the Public Health Act, 1872, with respect to any special assessment of woodlands for the purpose of any rate under those Acts, shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both of such purposes, and made rateable by this Act to the poor rate." Under this Act woods and woodlands must be rated in their natural and unimproved state. See *Baker* v. *Benford* (*Overseers of*), 33 L. T. (N.S.) 755; *Westmoreland* (*Earl of*) v. *Southwick and Oundle*, 36 L. T. (N.S.) 108. But a right of sporting over such woodlands may be taken into account as enhancing their value. *Eyton* v. *Mold* (*Overseers of*), 6 Q. B. D. 13; 50 L. J. M. C. 39; 43 L. T. (N.S.) 472; 29 W. R. 122; 45 J. P. 54.

(*n*) These words apply to the reservoir, but not to the pipes and mains of a

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water company. The pipes are merely the medium of carrying the water from the reservoir and are not privileged. *Reg.* v. *Birmingham Waterworks Company*, 1 B. & S. 84; 4 L. T. (N.S.) 242; 25 J. P. 308. As to the rating of mains and pipes, see *Reg.* v. *West Middlesex Waterworks Company*, 1 E. & E. 716; 28 L. J. M. C. 135; 23 J. P. 164; *Reg.* v. *Southwark and Vauxhall Water Company*, 6 E. & B. 1008; 3 Jur. (N.S.) 411; 21 J. P. 501; 5 W. R. 71; and for the rating of waterworks in the hands of a corporation or sanitary authority, see *Worcester* (*Mayor of*) v. *Droitwich Union Assessment Committee*, 2 Ex. D. 49; 45 L. J. M. C. 81; 36 L. T. (N.S.) 186; 25 W. R. 336; 41 J. P. 355; *Liverpool* (*Mayor of*) v. *Wavertree* (*Overseers of*), L. R. 2 Ex. D. 55; 39 J. P. 101; *Peterborough* (*Mayor of*) v. *Stamford Union*, 31 W. R. 949.

These words were held to apply to a dock belonging to a dock company. *Reg.* v. *Newport Dock Company*, 2 B. & S. 708; 31 L. J. M. C. 266; 6 L. T. (N.S.) 457; 9 Jur. (N.S.) 73: and see per Lord CAMPBELL, C. J., in *Peto* v. *West Ham* (*Overseers of*), 2 E. & E. 144 (at p. 157); 5 Jur. (N.S.) 1209; 28 L. J. M. C. 240; 7 W. R. 586; 23 J. P. 422; and per BLACKBURN, J., in *Reg.* v. *The Midland Railway Company*, L. R. 10 Q. B. 389; 44 L. J. Q. B. 137; 32 L. T. (N.S.) 753; 23 W. R. 921; 40 J. P. 198; and to a canal and filter beds supported on brick arches and sometimes covered with water and sometimes not: *East London Waterworks Company* v. *Leyton Sewer Authority*, L. R. 6 Q. B. 669; 40 L. J. M. C. 190; 20 W. R. 98; 35 J. P. 677.

(*o*) Bridges over a canal, dry docks, and posts put up for purposes of navigation are all accessories to the canal, and must be treated as part thereof. Both the canal and its accessories must be treated as land covered with water. *Reg.* v. *Neath* (*Overseers of*), L. R. 6 Q. B. 707; 40 L. J. M. C. 193. This case may usefully be compared with *Peto* v. *West Ham* (*Overseers of*), *supra*.

(*p*) The word *railway* means the way on which carriages actually go, including the line itself, the turn-tables, and sidings, and land used only for the supporting of this way, as for embankments, &c. All these are within the proviso, and are to be assessed at the lower rate. But the adjuncts, such as stations and warehouses, though necessary for the working of the railway, do not form part of it within the proviso, and land used for the latter purposes is assessable at its full net annual value. *South Wales Railway Company* v. *Swansea Local Board*, 4 E. & B. 189; 1 Jur. (N.S.) 326; 24 L. J. M. C. 30.

A railway, constructed under an Act of Parliament, for the transportation of traffic and as accessory to a dock, but free to the public on payment of certain rates and tolls, is a railway within this proviso, although neither used nor intended for the conveyance of passengers. *Reg.* v. *Newport Dock Company*, *supra*.

By a borough improvement Act, authorizing a rate to be levied, it was provided that the occupiers of any land used only as a railway constructed under the powers of an Act of Parliament, should be rated at one-fourth part only of the net rateable value. Sidings and turn-tables occupying about ten acres of land were used for loading trucks and carriages with goods, and also as a standing place for laden and unladen carriages, and were necessary for conducting the traffic of the railway. It was held that these were rateable at one-fourth of the net annual value. *Midland Railway Company* v. *Birmingham* (*Council of*), 13 L. T. (N.S.) 404; 30 J. P. 197.

A railway company which received wharfage dues in respect of a piece of land between the line of rails and a navigable river, was held to be properly rated at the full net annual value in respect of such land, as the land was used for a purpose other than that of a railway. *Reg.* v. *Taff Vale Railway Company*, 22 J. P. 21.

Certain Local Government Acts appointed improvement commissioners for sanitary purposes, over a district which lay partly within and partly without the borough of Walsall. The commissioners had power to levy rates to defray expenses which they were bound to incur. The rate on any railway within the commissioners' district was, by a local Act of 1828, limited to one-fourth of the rateable value of the railway. Part of a line of railway did run through the

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district, and was so rated under the local Act up to 1872. By the Public Health Act, 1872, urban authorities were constituted, and the mayor and town council became an urban authority for, amongst others, sanitary purposes in the borough. Both bodies, the commissioners and the town council, were given powers to make rates to defray the expenses incurred by them in the discharge of their respective duties. In the grant to the town council of rating powers, nothing was said with regard to any limit of rating upon any particular kind of property. Then came the present Act of 1875, which contained in particular section 207, *ante*, p. 233, and the sub-section in the text. By a local Act of 1876, the limits of the borough were greatly extended, and the mayor, &c., of the borough became the sanitary authority for the extended borough. The local Act of 1848 was repealed, with the exception of certain sections. Among the excepted sections that one which limited the amount of rateability of railways was not mentioned, but nothing was said specifically to put an end to that limited liability. It was held by the House of Lords, upon the true construction of the various Acts, public and local, that there having been no express revocation of the privilege granted in respect of rating the railway at only one-fourth of its rateable value, a borough rate calculated on its full rateable value could not be maintained. *Walsall (Overseers of)* v. *London and North Western Railway Company*, 4 App. Cas. 467.

(*q*) A railway constructed over land without purchase, but under contract to pay way leaves, used for the purpose of working mines and carrying goods, was held not to be within this exception, although under certain Acts of Parliament it had become vested in the railway company. *North Eastern Railway Company* v. *Leadgate Local Board*, L. R. 5 Q. B. 157; 39 L. J. M. C. 65; 22 L. T. (N.S.) 62; 18 W. R. 691; 34 J. P. 598.

(*r*) The language of this proviso is the same as that used in the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 88, and several cases have been decided upon the words *the same kind of property*. By these cases it has been settled that the words do not apply to the locality or the situation or the mode of occupation of the property, but to the nature of the property itself. See *Chelmsford Union* v. *Chelmsford Local Board*, 2 E. & B. 500; 18 Jur. 376 *n.*; *Tait* v. *Carlisle Local Board*, 2 E. & B. 492; 18 Jur. 374. In *Luscombe and Others* v. *Plymouth Local Board*, E. B. & E. 691; 27 L. J. M. C. 299; 31 L. T. (O.S.) 314; 4 Jur. (N.S.) 1234; 23 J. P. 212, there was a difference of opinion among the judges whether the exemption which arose under the local Act could be properly considered as depending upon locality and situation, or upon the nature of the property under the local Act there referred to; the rate was to be assessed among other matters upon all gardens, tenements, and hereditaments, adjoining to or upon any of the streets, lanes, roads, messuages, or other public places made within the populous or town parts of the borough of Plymouth, or at no greater distance than 100 feet from some street within such populous or town part. ERLE, J., considered that this described a *kind* of property, namely, *town property*, upon which the rate was to be laid, and that the other, namely, *county property*, was exempt. The other judges, however, considered this to be only a description of the locality which was to be exempt, and therefore, that the county property in the district was not exempt from the district rate.

Compare with this proviso the Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, s. 164, and the cases on that section cited in *Woolrych's Metropolis Management Acts*, at p. 103.

The workhouse of a parish not co-extensive with the district is not exempt from this rate. *Toxteth Park (Guardians of)* v. *Toxteth Local Board*, *ante*, p. 242.

The exemption which is to be continued, must be one of right and not one of fact only. Thus, by a local Act, 41 Geo. 3, c. xxx., the occupiers of houses in Sulcoates under £8 yearly value, were exempt from rates. The 4 Wm. 4, c. v., rendered the owners of all houses under £10 yearly value liable to rates instead of the occupiers. By 17 & 18 Vict. c. ci. (1854), the owners of all houses under such value were rendered liable to an improvement rate. But section 124,

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reciting that the occupiers of houses under the yearly value of £8 were exempt from rating by 41 Geo. 3, c. xxx., enacted that whatever exemption from rates was enjoyed in respect of the premises referred to in the recital should be enjoyed in the same way and manner and to the same extent as was enjoyed before the passing of the Act. Sulcoates having been included in the district of a local board, the Court of Queen's Bench held that the owners of houses in Sulcoates under £8 were properly included in the district rate. *Coates* v. *Kingston-upon-Hull Local Board*, 2 Jur. (N.S.) 1086; 20 J. P. 467.

(*s*) See *post*, section 297, as to provisional orders, and section 303, as to the alteration of local Acts.

Independently of this proviso, property which is exempt from the poor or local rates by express statutes will be exempt from the general district rate. See note (*b*), *supra*.

If a corporation borrow money for purposes to which these Acts apply, and charge the borough rate, it may supersede all these exemptions, as they do not exist in reference to that rate. See *Attorney-General* v. *Birmingham* (*Corporation of*), L. R. 3 Eq. 552.

(*t*) This sub-section applies whether the occupiers are rated or the owners, except in the case of owners when they have elected to be rated, whether the premises are occupied or not, under the previous sub-section. See the judgment of FIELD, J., in *Reg.* v. *Barclay*, *supra*. The objection that an owner is improperly rated under this section may be taken before justices when proceedings are instituted to enforce payment. Per CAVE, J., *ib*.

(*u*) It is here contemplated that the rate will be made for a certain period, but the Act does not require it to be so made. 32 & 33 Vict. c. 41, s. 14, requires the poor rate to be made for a period, and section 16 of that Act contains a provision similar to that in the text.

(*v*) By this provision the outgoing occupier is at liberty to pay a proportionate part of the rate to the urban authority. Hence, it must be to the interest of every ratepayer not to pay his rate as long as he can postpone it, so as to have the benefit of any abatement. *Quære*, whether a ratepayer entitled to any such abatement might recover the amount after payment of the full rate. If the ratepayer quit the premises without payment, and has no immediate successor, the urban authority will lose the residue of the rate.

There was no similar provision with regard to the poor rate until 45 & 46 Vict. c. 20, s. 3.

Rates made under this Act were assessed on the 20th April for the ensuing six months upon premises of a company which was wound up on the 22nd of the following August, the business being subsequently carried on by the liquidators as a going concern. Held, that there was no power to apportion the rates under the Apportionment Act, and that there was no change in the occupation under the Public Health Act, since the liquidators were in possession under the direction of the court, and consequently that the whole of the April rates must be proved for in the liquidation. *Wearmouth Crown Glass Company, In re*, 19 Ch. D. 640; 45 L. T. (N.S.) 757; 30 W. R. 316. The official liquidators are not liable to be rated as occupiers under such circumstances. *Reg.* v. *Curzon*, 46 L. T. (N.S.) 159; 30 W. R. 521; 47 J. P. 37. And when the occupation by the liquidator of the property of a company in liquidation had not been beneficial, an application for payment in full of poor and general district rates made after the liquidation commenced was refused. *Watson, Kipling, and Company, In re*, 23 Ch. D. 500; 31 W. R. 574; 52 L. J. Ch. 473; 49 L. T. (N.S.) 115. And see *West Hartlepool Iron Company, In re*, 34 L. T. (N.S.) 568, 570.

(*w*) This word gives a discretion to the local board. A local board laid out sums of money in permanent improvements, and, for defraying the expenses in part, borrowed money on mortgage of the special district rates. The permanent improvements consisted in works for lighting a town within the district, and for supplying it with water and for sewage. A large part of the district, owing to the inclination of the ground and the character of the occu-

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pation, derived no direct or immediate benefit from these works. To defray the expenses and to raise the interest and the instalments of the debt, the local board laid a special district rate on the whole district. It was held that the rate was valid, for that it was discretionary with the local board whether they would divide the district, and that, as they had not done so, the rate must be laid on the whole district. *Dorling* v. *Epsom Local Board*, 5 E. & B. 471; 1 Jur. (N.S.) 956; 24 L. J. M. C. 152; 20 J. P. 20. Compare the provisions of 18 & 19 Vict. c. 120, s. 159 (Metropolis), and the cases decided thereon, especially *West Middlesex Water Company* v. *Wandsworth District Board*, 22 J. P. 336.

Under this section a precept to overseers for the levy of a rate stated that the expenses in respect of which it was needed, were not required for the equal benefit of the parish, and directed the rate to be levied as regarded such parts of the parish as consisted of land used as arable, meadow, or pasture land only, or as woodland, orchard, market-garden, hop, herb, flower, fruit, or nursery ground, in proportion of one-fourth part only of the net annual value of such land. The classes of land mentioned in the precept did not lie together or form any division marked out by meter and bounds, but were scattered through the parish. It was held by the Court of Appeal that the precept was good. *Reg.* v. *London, Brighton, and South Coast Railway*, 5 Q. B. D. 89; 49 L. J. M. C. 32; 41 L. T. (N.S.) 577; 28 W. R. 288.

In *Mayer* v. *Burslem Local Board*, 39 J. P. 437, a local board resolved to divide their district into three sub-districts, and by a bye-law afterwards resolved that the resolution should not be altered unless one month's notice were given. It was held that until the resolution was duly rescinded a general rate could not be made for the whole district.

The authority cannot under this sub-section charge the general district rate with private improvements. See *Dryden* v. *Putney* (*Overseers of*), *ante*, p. 154.

As to the reimbursement of the general district rate in respect of moneys borrowed for this part, see section 234, sub-section (6), *post*.

(*x*) See the definition in section 4, *ante*, p. 9.

(*y*) See *Reg.* v. *London, Brighton, and South Coast Railway Company*, *supra*. It would appear that a street need not be divided by a line at right angles to the centre line, but may be divided in any reasonable way the board may think fit to adopt. Per COTTON, L. J., in *Nutter* v. *Accrington Local Board*, *ante*, p. 150.

(*z*) These are very indefinite terms. It seems that the appointment is left to the urban authority, as no appeal against it is provided.

Inspection of poor rate books for purposes of assessment.

212. For the purpose of assessing general district rates any person appointed by the urban authority may inspect take copies of or make extracts from, *any valuation list* or rate for the relief of the poor within the district, or any book relating to the same.

Any officer having the custody of any such rate (*a*) or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding *five pounds* (*b*).

(*a*) The term *list* is unfortunately omitted here. 21 & 22 Vict. c. 98, s. 56, from which this section is taken, did not give an inspection of the list. It is not, however, to be supposed that the clerk of the assessment committee, who has the custody of the list, will refuse to permit inspection, though he may not be liable to a penalty for refusal. No fee is chargeable for the inspection.

(*b*) As to the recovery of this penalty, see section 251, *post*.

Private Improvement Rate (a).

Sect. 213. Power to make private improvement rates.

213. Whenever an *urban authority* (*b*) have *incurred* (*c*) or become liable to any expenses which by this Act are or by such authority may be declared to be *private improvement expenses*, such authority may, if they think fit, make and levy on the *occupier* of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called *private improvement rates*, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding *five* pounds per centum per annum, in such period not exceeding *thirty years* as the urban authority may in each case determine (*d*).

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a *charge on* and be paid by the *owner* (*e*) for the time being of the premises so long as the same continue to be unoccupied.

(*a*) The sections under which expenses may be declared to be private improvement expenses are sections 23, 36, 41, 62, and 150 of this Act, and section 3 of the Public Health (Water) Act, 1878, in the Appendix. See section 240, *post*, as to rentcharges in respect of advances made for private improvements.

(*b*) Note that section 232, *post*, provides for private improvement rates by a rural authority.

(*c*) Apparently the urban authority must either pay those expenses out of the funds raised by their other rates (as to which see sections 207, 211 (4), *ante*), or borrow the sum required by them for those expenses in the first instance. See, therefore, the duty imposed upon the authority in regard to such borrowing by sections 233 and 234 (6), *post*, and in section 240, *post*, a mode of securing the repayment to the lender by means of a rentcharge to issue out of the premises.

(*d*) See, however, the appeal to the Local Government Board, which is given in section 268, *post*.

(*e*) See the definition in section 4, *ante*, p. 6. The owner will thus be liable to a rate in which his name does not appear.

Proportion of private improvement rate may be deducted from rent.

214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the *rackrent* (*a*), he shall be *entitled* (*b*) to deduct *three-fourths* of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the *rackrent* he shall be entitled to deduct from the rent so payable by him such proportion of *three-fourths* of the

rate as his rent bears to the rackrent: and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than *twenty years* is unexpired (*but not otherwise*), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable *by* him bears to the rent payable *to* him, and so in succession with respect to every landlord (holding for a term of which less than *twenty years* is unexpired) of the same premises both receiving and liable to pay rent in respect thereof (*c*). Sect. 214.

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (*d*).

(*a*) See the definition in section 4, *ante*, p. 8.

(*b*) But this right will be controlled by the language of the covenants contained in the lease. See section 226, *post*, and the notes thereon; and see in *Smith* v. *Humble*, 15 C. B. 321; 18 J. P. 760, an illustration of the principle of deduction of a tax chargeable on the owner from the rent paid to him.

(*c*) See the definition in section 4, *ante*, p. 6. Thus the rent received by the owner being £100, and the rent paid by him being £20, if the sum deducted by the tenant be £10, the landlord may deduct £2 from the rent paid to the owner in fee.

(*d*) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

Redemption of private improvement rates.

215. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

Provided that money paid in redemption of any private improvement rate shall *not be applied* by the urban authority otherwise than in defraying expenses incurred by them in works of *private improvement* or in discharging the principal of any moneys borrowed by them to meet *those expenses*, whether by means of a sinking fund or otherwise (*a*).

(*a*) *Query*, what is to be done with the payment if no further works of private improvement are required, and no money has been borrowed, or if the loan has been discharged.

Highway Rate.

Sect. 216. Costs of repairs of highways.

216. In any *urban district* (*a*) where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any *local Act*, the cost of repair of highways shall be defrayed as follows; (that is to say,)

(1.) Where the whole of the district is rated for works of paving water supply *and* (*b*) sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the *general district rate* (*c*):

(2.) Where parts of the district are not rated for works of paving water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways *in those parts* shall be defrayed out of a *highway rate* (*d*) to be separately assessed and levied in those parts by the urban authority as *surveyor of highways* (*e*), and the cost of such repair in the residue of the district shall be defrayed out of the *general district rate*:

(3.) Where no public works of paving water supply and sewerage are *established* (*f*) in the district, the cost of repair of highways in the district shall be defrayed out of a *highway rate*, to be levied throughout *the whole district* (*g*) by the urban authority as surveyor of highways:

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district (*h*), liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted *before the passing of this Act* a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act 1858 Amendment Act, 1861) (*i*), or unless such excluded part has been included in a highway district under the *Highway Acts* (*k*), for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district (*l*).

Provided also, that in the case of an urban district constituted *after the passing of this Act* a meeting of owners *and* ratepayers of the excluded part (to be convened and conducted in the manner

provided by Schedule III. to this Act) may decide that such excluded part shall be a *highway parish*, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways (*m*); but the requisition for holding any such meeting shall be made within *six months* (*n*) after the constitution of the urban district (*o*). Sect. 216.

The court of quarter sessions may by order direct that for *any* (*p*) such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under *the Highway Acts* (*q*).

(*a*) It is here to be noticed that the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 7, which constitutes highway boards for the repair of highways in combined or united parishes, contains an exception of all places where a local board has been constituted under the Public Health Act (*i.e.*, under this Act, see section 313, *post*). But 26 & 27 Vict. c. 17, s. 6, repealed and re-enacted in Schedule V., *post*, provides that "when any district under the Public Health Act . . . or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district."

(*b*) Note the copulative. If the whole of the district be rated for some but not all of these purposes, yet if some are provided for the whole district, the charge will be upon the general district rate; when there is a part which is not liable to any general rate for any of the purposes specified, a highway rate is to be levied under the next sub-section.

See the cases cited in note (*f*), *infra*.

(*c*) See section 209, *ante*, p. 235.

(*d*) That is, a rate made and levied according to the provisions of the Highway Act, 1835, 5 & 6 Will. 4, c. 50, and amending Acts, of which note particularly the Highway Rate Assessment and Expenditure Act, 1862, 45 & 46 Vict. c. 27. As to the amount of the rate, see *Dyson* v. *Greetland Local Board*, *ante*, p. 142.

(*e*) See section 144, *ante*, p. 137.

(*f*) The meaning of this word has been discussed in two recent cases. In *Oxenhope Local Board* v. *Bradford* (*Mayor, &c., of*), 47 L. T. (N.S.) 344; 31 W. R. 322; 47 J. P. 21, a local board made a general district rate and a highway rate, and demanded the same from the respondents, who had constructed two compensation reservoirs in connection with the supply of water for the town of Bradford. The respondents contended that the local board had no power to levy a highway rate, because in 1880 they had laid down in their district a curbstone about 200 yards long as a coping to a cinder pathway by a public road. It was held that the putting down of the curbstone did not constitute the establishment of public works of paving within the meaning of this sub-section, and therefore that the appellants were entitled to levy a highway rate. FIELD, J. said: "What does *established* mean? One knows perfectly well it does not mean one single act. If a man on one particular day sells a particular class of goods, he does not thereby establish a business for the sale of those goods. I cannot think that the word *established* in this section was ever intended to mean that a single act of that kind was to be construed as being public works established in the district." It may be mentioned incidentally that the dispute in this case arose with respect to the rating of the reservoirs

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which, when assessed to the general district rate, were assessable only at one-fourth their full net annual value. In *Reg.* v. *Belper Local Board*, 46 J. P. 166, the facts were as follows: In the B. urban district when formed, and when the local board began to take charge of the repair of highways, there were some old-fashioned stone drains or culverts into which some houses sent their sewage, and into which storm water entered through gratings, but the board had not added to these, nor made any new works themselves. The board made a highway rate. It was held that the existing drains sufficiently answered the description of public works established in the district, and therefore that the expense of highway repairs should have been paid out of the general district rate and not by a highway rate. GROVE, J., said: "I quite appreciate the argument that it is not because there may be a sewer having something of a public character, that there must necessarily be public works of sewerage within the meaning of the Act. There must be, to a reasonable extent, works of a public nature." In *The Birmingham Canal Company* v. *Docker*, 24 J. P. 691, a local board had been in the habit, by arrangement with the owners or occupiers adjoining, of constructing stone kerbs along the footpaths of certain roads and streets in their district, and of paying half the expense. Held that this was not "a public work of paving" within the corresponding section of the Local Government Act, 1858.

(*g*) A local board for a district consisting of a parish comprising three townships came within the description set out in this sub-section. The local board levied a highway rate for one of the townships, but it was held that they had no authority to do so, for that the highway rate must be levied over the whole district. *Re Broughton Local Board*, 12 L. T. (N.S.) 310; 29 J. P. 324.

(*h*) See section 275, *post*.

(*i*) That is, 24 & 25 Vict. c. 61, s. 9.

(*k*) See section 144, note (*c*), *ante*, p. 142.

(*l*) By 45 & 46 Vict. c. 27, s. 9, it is provided that when at the time of the passing of that Act (12th July, 1882) part of a parish is excluded from an urban sanitary district, but such excluded part is, for purposes connected with the repairs of highways and the payment of highway rates, treated as forming part of the district, the owners and ratepayers of the excluded part may, by resolution passed at a meeting to be convened and conducted in manner provided by Schedule III. of the Public Health Act, 1875, decide that such part shall be a highway parish, and if the resolution is approved by an order of the Local Government Board, the excluded part shall, from a date to be fixed by the said order, be, for all purposes connected with highways, surveyors of highways, and highway rates, considered and treated as a separate highway parish.

(*m*) And therefore exempt from the control of the urban authority.

(*n*) These must be calendar months; see 13 & 14 Vict. c. 21.

(*o*) The Highway Act, 1864, 27 & 28 Vict. c. 101, s. 5, provides that when part of a parish is, in pursuance of the Local Government Act (1858) Amendment Act, 1861, s. 9 (for which the provisions of this Act are now substituted, see section 313, *post*), treated as forming part of a district constituted under the Local Government Act, 1858 (*i.e.*, this Act), for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Acts, 1862 and 1864, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district without requiring the consent of the local board to be given.

For the constitution of this district, see section 275.

(*p*) This is a new provision which supplies a defect under the previous law where a parish included in a highway district was divided, and part placed within an urban sanitary district, either by the extension of the boundaries of a borough or the constitution of a local government district. That action

appeared to vacate the office of waywarden, and there were no means to provide a waywarden for the excluded part. Now such a waywarden can be procured. **Note to Sect. 216.**

Though the language is thus general, it is doubtful whether parishes affected by such division before the Act will be entitled to avail themselves of the provision wherever there is no waywarden for the excluded part. This paragraph appears to refer to the previous one, which is limited to future places.

With regard to the adjustment of accounts consequent upon such division, it will probably be found that the provision in section 304, *post*, will be applicable.

(*q*) See note (*k*).

217. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them (*a*); (that is to say,) **Certain acts not required to be done in case of highway rate made by urban authority.**

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such urban authority (*b*);

To lay the same before the parishioners assembled in vestry;

To verify before any justice any accounts kept by them of such highway rates;

and all such accounts shall be *audited* (*c*) in all respects in the same way as the other acccounts of the urban authority.

(*a*) These are all matters required by 5 & 6 Will. 4, c. 50, in respect of highway rates.

(*b*) According to section 222, *post*, the rate is to be made in such manner as the urban authority may appoint. It will be best that it should be made as the general district rate "in writing under their common seal." See section 210, *ante*, p. 235.

(*c*) See sections 245–250, *post*.

General Provisions as to Urban Rates.

218. Every urban authority, before proceeding to make a general district rate or private improvement rate under this Act, shall cause an *estimate* (*a*) to be prepared of the money required for the purposes (*b*) in respect of which the rate is to be made, showing— **Estimate to be prepared before making rates.**

The several sums required for each of such purposes; and

The rateable value of the property assessable; and

The amount of rate which for those purposes it is necessary to make on each pound of such value (*b*);

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at

Sect. 218. their office, open to public inspection during the office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same (*c*).

(*a*) Much doubt existed as to the effect of this estimate as required by 11 & 12 Vict. c. 63, s. 89. The Court of Queen's Bench at first appear to have treated it as analogous to the the title of the poor rate, so that if it contained an illegal item it was bad. See *Reg.* v. *Worksop Local Board*, 21 J. P. 451. The question afterwards arose as to whether an insufficient statement of an item would avoid the rate. The consequences of such a decision were so serious that the court, in a subsequent case arising out of the proceedings of the same local board, declined to decide the question whether the section had that effect, or whether it was directory only. *Reg.* v. *Worksop Local Board*, 34 L. J. M. C. 220; 5 B. & S. 951; 11 Jur. (N.S.) 1015; 12 W. R. 710; 10 L. T. (N.S.) 297; 29 J. P. 759. This question is now settled by the passage at the end of this section.

The proper mode of carrying this regulation into effect appears to be to enter the estimate in a page of the book preceding the rate.

The local board must be careful, besides this estimate, to cause the rate to have a good *title*, otherwise it will be void. *Reg.* v. *Byron*, 12 Q. B. 321; 17 L. J. M. C. 134; 12 J. P. 362; *Moulton* (*Overseers of*) v. *Eastern Counties Railway*, 5 E. & B. 974; 25 L. J. M. C. 49; 2 Jur. (N.S.) 161; 20 J. P. 566.

Again, though the estimate has no legal consequence in itself, perhaps its absence may invalidate the rate; and as its absence may have this effect, so also an illusory or defective estimate may have it. It may, therefore, be noticed that the Court of Queen's Bench held, in *Reg.* v. *Worksop Local Board*, *supra*, that "election expenses, filling in drains, and cleansing drains and outfall," and also "law charges, surveyor's instruments, and incidental expenses" were respectively improperly grouped together in the estimate as individual items.

(*b*) But though the estimate will not affect the validity of the rate, it must not be considered that the rate will be valid if it be made for purposes which are illegal, and which may be shown in the estimate.

In considering what are legal or illegal purposes, it is to be remarked that the charges of an accountant employed to investigate the accounts of a local board were held by the justices at quarter sessions to be illegal, being, under the circumstances of the case, in their judgment unnecessary, and the Court of Queen's Bench decided that this was a question for the sessions, and declined to reverse their decision. *Reg.* v. *Worksop Local Board*, 21 J. P. 451.

Again it was held by the same court that a local board could not make a district rate to pay the costs of defending certain *quo warranto* informations brought against individual members of the board, which did not impeach the validity of the whole board; nor the expenses of opposing a local bill brought into Parliament by a gaslight company in their district for an increase of powers. But the expenses of opposing proceedings in Chancery against the board for certain works which they had caused to be executed were held to be a legal charge, although the suit was not ended when payment was proposed to be made. *Reg.* v. *Marris*, 5 W. R. 254; 28 L. T. (O.S.) 266; 21 J. P. 580. And see *R.* v. *Bridgwater* (*Mayor of*), 10 A. & E. 281; *R.* v. *Leeds* (*Mayor of*), 4 Q. B. 796; L. J. Q. B. 369; 7 Jur. 669. It has been held, however, in the case of a municipal corporation, that they are justified in defraying out of the corporate funds the expenses of defraying *quo warranto* informations against individual members of the corporation, if the object of such informations were to impeach the title or destroy the legal existence of the corporation as a body. *Holdsworth* v. *Dartmouth* (*Mayor of*), 11 A. & E. 490; 4 Jur. 605, which is in accordance with *Attorney-General* v. *Norwich* (*Corporation of*), 2 My. & C. 406; 1 Jur. 398.

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A metropolitan vestry incorporated under 18 & 19 Vict. c. 120, were restrained from applying any part of their rates in paying the expenses of a dinner or ball or other ceremonies in connection with the opening of a new vestry hall. But as no part of the rates had been actually so applied, it was held that individual vestrymen who had voted for the resolution for the dinner, &c., could not be made parties to the action for the purpose of obtaining costs from them. *Attorney-General* v. *Bermondsey* (*Vestry of*), 23 Ch. D. 60; 52 L. J. Ch. 567; 31 W. R. 463; 48 L. T. (N.S.) 445; 47 J. P. 453. And see *Reg.* v. *Bedford* (*Mayor of*), 47 J. P. 756.

In *Reg.* v. *Morris*, *supra*, it was held that as the rate was made for some items which were illegal, it was altogether void. This is in conformity with *Chesterton* v. *Farlar*, 1 Cort. 354; 2 Moore, P. C. 330. See also *R.* v. *Sillifant*, 4 A. & E. 354; 5 N. & M. 640; *Reg.* v. *Byron*, 3 N. S. C. 180; 12 Q. B. 321; 12 Jur. 479; 17 L. J. M. C. 134: *Tozer* v. *Child*, 6 E. & B. 289; 2 Jur. (N.S.) 928; 25 L. J. Q. B. 337; 20 J. P. 805. It appears, however, that the rate may be enforced as long as it is good on the face of it. When this is the case the rate can only be impeached by appeal to quarter sessions on the ground that it has been made for an illegal purpose. *Luton Local Board* v. *Davis*, 2 E. & E. 678; 29 L. J. M. C. 173; 6 Jur. (N.S.) 580; 2 L. T. (N.S.) 172; 8 W. R. 411; 24 J. P. 677.

With regard to the power of a corporation to defray out of the rates the expenses incurred in defending proceedings against their officers for acts done in the performance of their duty, see *Reg.* v. *Thompson*, 5 Q. B. 477; D. & M. 497; *Reg.* v. *Stamford* (*Town Council of*), 13 L. J. Q. B. 177; 8 Jur. 558. In these cases it was held that a corporation could not order payment of costs of defending borough constables in a prosecution against them for acts done in the course of their duty. See also *Reg.* v. *Lichfield* (*Mayor of*), 10 Q. B. 534; 16 L. J. Q. B. 333; 11 Jur. 888. In *Pickering* v. *Stephenson*, L. R. 14 Eq. 322; 41 L. J. Ch. 493; 26 L. T. (N.S.) 608; 20 W. R. 654, it was decided that a trading company could not pay out of their funds the cost of prosecuting a person for libelling the council of the company. And it has also been decided that the expenses incurred by an officer of a borough in defending his character in relation to matters arising out of his official duties could not lawfully be paid out of the borough fund. *Reg.* v. *Liverpool* (*Mayor of*), 41 L. J. Q. B. 175; 26 L. T. (N.S.) 101; 20 W. R. 389. This decision is in accordance with *Attorney-General* v. *Compton*, 1 Y. & C. 417. When the chief constable of a borough had, by direction of borough magistrates, laid an information against a person for conspiracy, and an action for malicious prosecution was brought by such person against him, and verdict recovered for £200, it was held that it was not competent to the council to order payment of the chief constable's costs out of the borough fund or rate. *Reg.* v. *Exeter* (*Mayor of*), 6 Q. B. D. 135; 44 L. T. (N.S.) 101; 29 W. R. 441; 45 J. P. 158. But, on the other hand, when officers are sued for acts done on behalf of the authority, and under their direction or with their sanction, the authority may, as it seems from *Attorney-General* v. *Pearson*, 10 Jur. 651, pay the costs and even the damages awarded against those officers out of their funds.

When money had been *bonâ fide* paid upon an order of a town council to a town clerk, for professional business done by him as a solicitor, upon instructions given by the corporation, the mere fact of his having had no retainer under the seal of the corporation was held to be no sufficient ground why the court should, under 7 Will. 4 & 1 Vict. c. 78, s. 14, quash the order of the council as for a misapplication of the borough funds. And it was further held that costs incurred by a town council in taking legal advice as to the validity of a borough rate which they threatened to enforce, but concerning which they were threatened with litigation if they should persevere in their intention, were costs chargeable upon the borough fund. *Reg.* v. *Prest*, 16 Q. B. 32; 15 Jur. 554; 20 L. J. Q. B. 17.

The application of the doctrine of *ultra vires* to the proceedings of public boards cannot be fully discussed here, and reference should be made to the work

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of Mr. Seward Brice on the subject. A few cases may be cited, however, to illustrate the doctrine. In *The East Anglian Railway Company* v. *The Eastern Counties Railway Company*, 11 C. B. 775, JERVIS, C. J., said: "It is clear that the defendants have a limited authority only, and are a corporation only for the purpose of making and maintaining the railway sanctioned by the Act; and that their funds can only be applied for the purposes directed and provided for by the statute." In *Bateman* v. *Ashton-under-Lyne* (*Mayor of*), 3 H. & N. 323; 27 L. J. Ex. 458, it was held that a waterworks company having certain powers for the supply of water to a district might lawfully apply to Parliament for the extension of those powers, and consequently contract with an engineer for the supply of plans and estimates essential to such application. BRAMWELL, B., however, dissented from this judgment. See also *Stockport Waterworks Company* v. *Manchester* (*Mayor of*), 7 L. T. (N.S.) 545; 9 Jur. (N.S.) 266; *Taylor* v. *Chichester and Midhurst Railway Company*, L. R. 4 H. L. 628; 39 L. J. Ex. 217; 23 L. T. (N.S.) 657; *Chatham Local Board* v. *Rochester Paving Commissioners*, L. R. 1 Q. B. 24; 35 L. J. M. C. 81; 13 L. T. (N.S.) 273; 14 W. R. 51; 12 Jur. (N.S.) 47.

It seems to have been established by numerous decisions that when public boards take proceedings in Parliament to protect the property under their control and management, the expenses which they incur are chargeable upon the funds at their disposal; but if they originate parliamentary measures for the purpose of increasing their property or extending their powers, they must rely upon obtaining express sanction from the legislature for charging the costs upon any of their funds. It is unnecessary to enumerate the decisions in question, for the Municipal Corporations (Borough Funds) Act, 1872, 35 & 36 Vict. c. 91, which is set out in the Appendix, now enables local boards in certain cases to charge on their funds the costs of promoting or opposing parliamentary or other proceedings for the benefit of the inhabitants. And although there may be cases in which such expenditure might be justified without the aid of this statute, it will be found in practice advisable to conform to its formalities in almost every instance.

It may be useful to add that overseers of the poor have not as such any power to apply the poor rates in their hands to oppose a bill in Parliament, though the bill if passed would have charged the poor rate of the parish, and otherwise have affected the value of rateable property. *Reg.* v. *White, Ex parte Sibly*, 11 Q. B. D. 309; 49 L. T. (N.S.) 183; 31 W. R. 811; 47 J. P. 741; 52 L. J. M. C. 128.

The period for which the rate is to be made is not included in the matters which must appear in the estimate. This must, however, appear in the rate itself. See *ante*, p. 241, section 211, note (*u*).

(*c*) See note (*a*), *supra*.

Rates to be open to inspection.

219. Any person interested in or assessed to any rate made under this Act may inspect *the same*, and *any estimate* (*a*) made previously thereto, and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding *five pounds* (*b*).

(*a*) This is an additional inspection to that provided for in the preceding section. On this occasion copies or extracts may be taken, but no such provision is made in respect of the previous inspection. Moreover, refusal of inspection in this case subjects the officer to a penalty recoverable on summary conviction. No such summary remedy is given in the previous case.

See section 210, *ante*, p. 235, as to the notice to be given of the intended making of the rate. **Note to Sect. 219.**

(*b*) See section 251, *post*, as to the recovery of this penalty.

220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description. Description of owner or occupier in rates.

Notwithstanding the facility which is thus given to the urban authority, it is, nevertheless, most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings when the name of the party proceeded against is not stated. Moreover, if it can be shown that the name was known to the authority, it may perhaps be held that the use of the term *owner* or *occupier* is not justified. Again, it may well be questioned whether, although these words are used, the assessment will be available against an owner or occupier who may succeed to the premises.

221. An urban authority may from time to time *amend* any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by *inserting* the *name* of any person who ought to have been assessed (*a*), or by *striking out* the *name* of any person who ought not to have been assessed, or by *raising* or *reducing* the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated (*b*), or by making *any other alteration* which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate. Rates may be amended.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made (*c*), and with respect to him an amended rate shall be considered to have been made at the time when he first received notice (*d*) of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted until *seven* days after such notice has been given to him.

(*a*) There is no such power as this in the case of a poor rate. See *Pembroke* v. *Wye* (*Overseers of*), 47 J. P. 359.

(*b*) These words raise a difficulty. There may be an under-rating or over-rating arising out of an error in computation, or in an inaccurate reference to the valuation list, and this would clearly be within the section. But it may be

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contended that the value is wrongly entered in the valuation list. Nevertheless, according to section 211, that list is to be followed. Can the urban authority entertain this enquiry? If they can, they can depart from the valuation list wholly or to a great extent. This is so contrary to the intention of the legislature that it is to be expected that the courts of law will not sanction it. At the same time it is not easy to see any serious ground for the appeal which is provided for by the section in respect of any other amendment.

(*c*) See section 269, *post*. Doubtless a ratepayer may appeal against the reduction of another person's rate on this amendment, if he can find it out.

(*d*) As to the authentication and service of this notice, see sections 266, 267, *post*. The customary demand note would be sufficient notice if served upon the party after the amendment.

The days will be one inclusive and one exclusive.

Publication and collection of rates.

222. All rates made or collected (*a*) under this Act shall be *published* in the same manner as poor rates (*b*), and shall commence and be payable at such time or times (*c*), and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with *any other rate* (*d*) or tax, as the urban authority may from time to time appoint: Provided that no publication shall be required of any *private improvement rate* (*e*).

(*a*) There does not appear to be any rate collected under this Act which is not made under it.

(*b*) The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 99, required the rate to be published in the same manner as the poor rate. But it was decided that rates made under that section were not void if not published in the same manner as the poor rate, there being no words of avoidance in that Act as in 17 Geo. 2, c. 3, which relates to the poor rate. *Lefeuvre* v. *Miller*, 8 E. & B. 321; 26 L. J. M. C. 175; 3 Jur. (N.S.) 1255; 21 J. P. 436; 29 L. T. (O.S.) 344.

As to what publication is necessary, see 17 Geo. 2, c. 3, and the cases decided thereon in *Archbold's Poor Law*, p. 902.

(*c*) This enables the urban authority to make a rate payable by instalments. As regards the water rate, reference must be made to the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, s. 50, which prescribes payment of that rate at the usual quarter days.

(*d*) This must mean some other rate or tax over which the urban authority have a control. It often proves inconvenient to have several rates and taxes collected together, and therefore the authority which levies a rate ought to have exclusive power of regulating its collection. It cannot be presumed that the legislature intended that such power should be interfered with by the urban authority. Reference should be made to 25 & 26 Vict. c. 82, which provides for the consolidation of the proceedings for the recovery of several local rates and taxes due from the same person before the justices.

(*e*) See section 213, *ante*, p. 248. This rate is nothing more than a reimbursement of expenses incurred for the benefit of an owner of property of which he has had ample notice.

Evidence of rates.

223. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *primâ facie* evidence of the making and validity of the rates mentioned therein.

Section 262, *post*, provides that no rate shall be vacated for want of form; but if the rate show on the face of it that it is defective in substance (as if

there be no estimate, or if it appear to be made for illegal purposes), it is presumed that the objection may nevertheless be taken to it with success. Hence, it is incumbent upon urban authorities to prepare their rates with proper attention and care. The text only makes the production *primâ facie* evidence of the rates' validity. Note to Sect. 223.

224. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they *may* deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just. Power to make deduction from rate in certain cases.

This section is difficult to apply. The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 86, provided for a special district rate in respect of the making of a sewer, and contained a proviso as in the text, which was not unreasonable. By 21 & 22 Vict. c. 98, special district rates were abolished, but the proviso was re-enacted as a substantive clause, and consequently it is inserted as above, but how the authority can carry it into effect in their general district rate is not shown. They will make the full rate and insert that amount in the book, but from this amount so formerly inserted, they may deduct.

Assuming that the section can be carried into execution, though the words are discretionary, the nature of the case seems to require that they should be construed as imperative, with this qualification, that the local authority must have to exercise their judgment as to the amount and the period of the deduction.

225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof. Power to reduce or remit rates.

Such remission will not deprive the person of a parliamentary or municipal franchise on the ground of receiving parochial relief. Its effect as regards his qualification as an elector of the local board will be considered hereafter.

226. Nothing in this part of this Act shall alter or affect any lease, contract, or agreement, made or entered into between the landlord and tenant of any premises. Saving for existing agreements.

By an agreement marsh lands were demised subject to a condition that the tenant should pay all outgoings, rates, taxes, costs, &c., whether parochial or parliamentary, which were and might be chargeable on the lands. An assessment was made by the commissioners of sewers for the permanent benefit of the lands, in certain proportions upon the owners and occupiers. For four years the tenant paid in the first instance both his own share and that of his landlord, and upon each half-year's settlement of accounts, for rent due, with the landlord's agent, who was ignorant of the agreement. The sum so paid was allowed towards the rent, and the receipts were given for the balance. Held, in an action brought upon the agreement to recover the sums so allowed as arrears of rent, that the facts supported a plea of payment of the rent. *Waller* v. *Andrews*, 3 M. & W. 312. But if a tenant voluntarily pays taxes which he alleges ought to have been paid by the landlord and afterwards pays

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rent without deduction, he cannot recover the amount against the landlord. *Saunderson* v. *Hanson*, 3 C. & P. 314; and see *Andrew* v. *Hancock*, 1 B. & B. 37; *Fuller* v. *Abbott*, 4 Taunt. 105. In order to entitle a tenant to deduc from his rent a payment which he is entitled to deduct under a statute, the money must have been actually paid. *Ryan* v. *Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134; 17 L. T. (N.S.) 506; 16 W. R. 314; 32 J. P. 135. As to the rating of mines and the right to deduct one half of the rates under section 8 of the Rating Act, 1874 (37 & 38 Vict. c. 54), see *Devonshire* (*Duke of*) v. *Barrow Haematite Steel Company*, 2 Q. B. D. 286; 46 L. J. Q. B. 96; 35 L. T. (N.S.) 474; 25 W. R. 60; *Chaloner* v. *Bolckow*, 3 App. Cas. 933; 47 L. J. Q. B. 562; 39 L. T. (N.S.) 134; 26 W. R. 541; 42 J. P. 756.

A. demised land to B. upon a building lease, at the yearly rent of £60 clear of all rates and assessments, the sewers rate and land tax excepted, with the usual covenant for payment of rent. B. having by building on the land increased its rateable value to £300 per annum: Held, that he was only entitled to deduct the sewers rate and land tax upon the original rent, and not in respect of the improved value. *Smith* v. *Humble*, 15 C. B. 321. And see *Watson* v. *Atkins*, 3 B. & Ald. 647; *Graham* v. *Wade*, 16 East, 29; *Watson* v. *Home*, 7 B. & C. 285; 1 M. & R. 191. But when a lessee covenanted that he would pay all taxes, charges, rates, tithes, &c., which then were or should at any time thereafter during that demise be taxed, charged, assessed, or imposed, upon the said demised premises: Held, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself. *Hurst* v. *Hurst*, 4 Ex. 571.

A landlord, liable among others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other taxes and deductions whatsoever, either parliamentary or parochial, taxed or imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property taxed excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair the said parts, during the continuance of the Act; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justices warrant was also given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to meet and make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the above-mentioned liability, made further provision as to the holding of such meetings and laying rates for the said repair. Held, that the original liability for contribution to repairs, did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and therefore, the court finding no clause in the above statutes which extended the ultimate liability to lessees and occupiers as well as owners, that the lessee having been compelled, in the lessor's default to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor. *Baker* v. *Greenhill*, 3 Q. B. 148; 11 L. J. Q. B. 161.

By a local Act commissioners were authorized to flag footways, and the costs thereof were to be paid by the tenants or occupiers of the houses next adjoining. Another clause enabled the tenant to deduct the costs so paid by him out of his rent. Held, that this charge was within the terms of a covenant in a lease subsequently made, whereby the tenant covenanted to pay all taxes, rates, duties, levies, assessments, and payments whatever, which were or during the term might be rated, levied, assessed, or imposed on the premises. *Payne* v. *Burridge*, 12 M. & W. 727; 13 L. J. Ex. 190.

A sewer rate is not a "parliamentary tax" within the meaning of a covenant to pay parliamentary taxes. *Brewster* v. *Kitchel*, 2 Salk. 615; *Palmer* v. *Earith*, 14 M. & W. 428.

Drainage works done upon premises under the Metropolis Management Act,

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1855, 18 & 19 Vict. c. 120, were held to be payable by a lessee under a covenant to pay, bear, and discharge "all such parliamentary, parochial, county, district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties, and services whatsoever, as during the term should be taxed, assessed, or imposed, upon or in respect of the premises or any part thereof." *Sweet* v. *Seager*, 2 C. B. (N.S.) 119; 3 Jur. (N.S.) 588; 5 W. R. 560; 21 J. P. 406.

By a local Act a town council were empowered to order streets to be sewered and paved by the owners of adjoining premises, and on their default themselves to do the work and charge the owners. The council were also empowered to require the tenants to pay, it being made compulsory on the owner to allow such payments to be deducted from the rent. Premises in a street were demised by the plaintiff to the defendant, the latter covenanting that he would pay and discharge all taxes, rates, duties, assessments, and impositions whatsoever (except property tax), which during the term should become payable in respect of the demised premises. The plaintiff having paid certain expenses of paving the street sought repayment from the defendant. But it was held, distinguishing *Sweet* v. *Seager*, *supra*, that the payment having been made by the plaintiff, not for a rate, assessment, or imposition, which had become payable in respect of the demised premises, but for a breach of duty imposed upon *him* by the Act, he was not entitled to recover the amount. *Tidswell* v. *Whitworth*, L. R. 2 C. P. 326; 36 L. J. C. P. 103; 15 L. T. (N.S.) 574; 15 W. R. 427.

Under a covenant to pay all taxes, rates, duties, and assessments whatsoever, which during the continuance of the demise should be taxed, &c., on the tenant or landlord of the demised premises in respect thereof, the tenant was held liable to pay paving expenses under the Metropolis Management Acts. *Thompson* v. *Lapworth*, L. R. 3 C. P. 149; 37 L. J. C. P. 74; 17 L. T. (N.S.) 507; 16 W. R. 312; 32 J. P. 184.

A landlord's covenant to pay all rates, taxes, tithes, and all other charges payable in respect of the premises, was held not to apply to the costs of cleansing a piece of ornamental water effected under an order in execution of the Nuisances Removal Act, 18 & 19 Vict. c. 121, s. 16. *Bird* v. *Elves*, L. R. 3 Ex. 225; 37 L. J. Ex. 91; 18 L. T. (N.S.) 727; 16 W. R. 1120; 32 J. P. 694.

A tenant covenanted to pay all outgoings charged on the premises or on the landlord in respect thereof. A drain was made after notice served upon him by the lessee who was in occupation under an arrangement made between the landlord and tenant, that the person held to be liable should bear the charge, and it was decided that the lessee was liable. *Crosse* v. *Raw*, L. R. 9 Ex. 209; 43 L. J. Ex. 144; 23 W. R. 6. (But see sections 104, 214, *ante*.) This decision was followed in a very recent case. There the plaintiff demised premises to the defendant at a yearly rent "clear of all present and future rates, taxes, and deductions," and a covenant was contained in the lease that the defendant should pay the rent, and also bear and pay all the rates, taxes, and outgoings, then payable or thereafter to become payable in respect of the premises. The plaintiff having paid certain paving expenses, brought an action to recover them from the defendants. It was held that the omission of the word "outgoings" in the reddendum clause did not qualify the covenant so as to take it out of the decision in *Crosse* v. *Raw*, and that the plaintiff was therefore entitled to recover. *Gardner* v. *Furness Railway Company*, 47 J. P. 232. *Crosse* v. *Raw*, was also approved of by the Court of Appeal in *Budd* v. *Marshall*, *infra*.

Tidswell v. *Whitworth* (*supra*), was followed, and *Thompson* v. *Lapworth*, distinguished, in *Rawlins* v. *Briggs*, 3 C. P. D. 368; 47 L. J. C. P. 487; 27 W. R. 138; 42 J. P. 791. There the covenant was to pay all and all manner of taxes, rates, charges, assessments, and impositions whatever, then or at any time or times during the term to be charged, assessed, or imposed, on the demised premises, or in respect thereof or of the said rent by authority of Parliament or otherwise whatsoever. During the term the lessor had to pay a

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sum in respect of the abatement of a nuisance after notice by the local authority, and it was held he could not recover from the lessee. This case should be compared with *Budd* v. *Marshall*, 5 C. P. D. 481; 50 L. J. C. P. 21; 42 L. T. (N.S.) 793; 29 W. R. 148; 44 J. P. 584. There the defendant was tenant to the plaintiffs, and had covenanted to "bear, pay, and discharge all taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise." The drainage having become defective the local authority required the owners to abate the nuisance, and obtained an order from a justice to the like effect. The plaintiffs having executed the works necessary to enable them to obey the order, sought to recover the costs from the defendant under his covenant. It was held by BRAMWELL and BAGGALLAY, L. JJ. (BRETT, L. J., dissenting), that the action was maintainable. In another case the plaintiff bought of the defendant three houses, and by the contract of sale the latter agreed to discharge "all rates, taxes, and outgoings," up to the time of completion. The purchase was completed, and afterwards payment was demanded from the plaintiffs of the expenses incurred under a local Act in improving the street in which the houses stood. The work had been done some time before the houses belonged to the defendant, and at the time of sale to him the plaintiffs knew of the charge. The plaintiffs having paid the sum demanded, sued the defendant for repayment. It was held, distinguishing *Tidswell* v. *Whitworth*, that the charge for improving the street was an "outgoing" which the defendant had bound himself to discharge, and that the plaintiffs were entitled to recover. *Midgley* v. *Coppock*, 4 Ex. D. 309; 48 L. J. Ex. 674; 40 L. T. (N.S.) 870; 43 J. P. 683.

The defendant on taking a house covenanted to pay "all rates, taxes, charges, and assessments whatsoever, which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof." It was held that paving expenses under section 150 were "a charge upon the premises," or "upon a person in respect thereof," so as to entitle the lessor to recover from the defendant the amount of such expenses when paid by him. *Hartley* v. *Hudson*, 4 C. P. D. 367; 48 L. J. C. P. 701; 43 J. P. 784.

The lessee of a house in a new street within the metropolitan district covenanted with his lessor to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof. It was held that the proportion of the expense of paving the new street assessed on the demised house under the Metropolis Management Acts, was not a rate payable by the tenant under his covenant, as not being charged on the premises, but upon the owner in respect of the premises. *Allum* v. *Dickinson*, 9 Q. B. D. 632; 47 L. T. (N.S.) 493; 30 W. R. 930; 52 L. J. Q. B. 190; 47 J. P. 102.

The respective liabilities of landlord and tenant in respect of nuisances on the demised premises have been already noticed. See the notes to section 94, *ante*, p. 98.

Limit in local Act not to apply to rate for purposes of this Act.

227. Any limit imposed on or in respect of any rate by any local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

It was held that the corresponding section in 35 & 36 Vict. c. 79 (s. 43), did not affect exemptions from assessment under a local Act. *Walton* (*Overseers of*) v. *Walford*, L. R. 10 Q. B. 180; 44 L. J. Q. B. 74; 31 L. T. (N.S.) 825; 23 W. R. 292; 39 J. P. 183.

By a local Improvement Act, it was provided that no borough rate levied hereafter should exceed in any year the sum of 1*s.* in the £, provided that, with the consent of a majority of the persons liable to be rated thereto, the corporation might increase such rate above the amount by the Act limited

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The Act further provided that no such increase should be leviable upon the owner or occupier of any coal mine in respect thereof, or upon any person assessable in the proportion of one-fourth only of any rate, other than the highway rate, in respect of his property or of premises occupied by him. Held that this was not an exemption of property from liability, but a limit imposed upon the borough rate leviable upon colliery and certain other property; that though the limit still existed so far as any rate leviable by the corporation for borough purposes was concerned, the provision in the text prevented its applying to rates leviable by the corporation for the purposes of the Public Health Act, 1875, and that the corporation were unrestricted in the amount of any rate leviable by them thereunder. *St. Helens (Corporation of)* v. *St. Helens Colliery Company*, 48 J. P. 39.

Quota of rates to be paid by the Universities, &c.

228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching, repairing, lighting, and cleansing, under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act (*a*).

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities, halls, and colleges, in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

(*a*). See section 179, *ante*, p. 209.

Expenses of Rural Authority.

Expenses of rural authority.

229. The expenses incurred by a rural authority in the execution of this Act shall be divided into *general expenses* and *special expenses*.

General expenses (other than those chargeable on owners and occupiers under this Act) (*a*) shall be the expenses of the *establishment* and *officers* of the rural authority (*b*), the expenses in relation to *disinfection*, the providing *conveyance for infected persons*, and all

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Special expenses shall be the expenses of the construction maintenance and cleansing of *sewers* in any *contributory place* (*e*) within the district, the providing a supply of *water* to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act (*f*), the charges and *expenses* arising out of or incidental to the *possession of property* transferred to the rural authority in trust for any contributory place, and all *other expenses* incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board (*g*) to be *special expenses*.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any *two* or more *contributory places* within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportion *as they think just*, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be *special expenses* legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment (*h*), may, within *twenty-one* days after notice (*i*) has been given to them of the apportionment, send or deliver a memorial (*k*) to the Local Government Board stating their grounds of complaint, and the said board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned (*l*).

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in *the district* (*m*) according to the rateable value of each contributory place *in manner in this Act mentioned* (*n*).

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act; that is to say,

(1.) Every parish (*o*) not having any part of its area within the limits of *a special drainage district* formed in pursuance of the Sanitary Acts (*p*) or of this Act, or of an urban district; and

(2.) Every such special drainage district as aforesaid; and

(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4.) In the case of a parish a part of which is situate within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

(*a*) These are improvement rates (see section 232, *post*), and, in some cases, water rates.

(*b*) These are such officers as are, in addition to the ordinary staff of the board of guardians, appointed for sanitary purposes. It seems that the remuneration of the clerk and treasurer under section 190, *ante*, p. 222, should be included under the head of general expenses.

(*c*) The next paragraph specifies the expenses which the Act determines to be special expenses.

(*d*) To obtain this order the board of guardians should submit upon foolscap folio paper a statement of the expenditure, the purpose for which it was incurred, and the grounds of their application. The Local Government Board have issued many orders for this object, when they have been satisfied that the expenditure was clearly for a local purpose or with a view to local benefit.

(*e*) A contributory place is described later on in the section.

(*f*) See section 57, *ante*, p. 66, with respect to the levying and recovery of water rates. It is to be observed that when the supply has been provided, water rates or rents are to be obtained, and so far as the amount so obtained is deficient to meet the charges on the authority for such supply, a precept for special expenses must be issued. See also The Public Health (Water) Act, 1878, *post*.

The question has arisen whether parliamentary expenses incurred in the procuring or opposing water bills are within the words *providing a supply of water*. The better opinion appears to be in the negative. But the expenses incurred by the authority in and about the obtaining of a provisional order for the acquiring of water rights or land for a reservoir appear to be within these words. Section 297 deals with provisional orders.

(*g*) See note (*d*), *supra*. This order is conclusive. See section 295, *post*.

(*h*) This is a singular provision, seeing that, according to the terms of the preceding paragraph, the guardians are to apportion *as they think just*.

(*i*) See sections 266, 267, *post*, as to the authentication and service of this notice.

(*k*) This memorial should be on folio foolscap paper, addressed to the president under cover to the secretary. It will suffice if signed by the overseers, though it may be supported by the signatures of a few ratepayers. It is not necessary that there should be many.

(*l*) See also section 295, *post*. It is to be noticed that no appeal is given against the order of the Local Government Board in this matter.

(*m*) The district is so much of the union as is not included in an urban sanitary district. See section 9, *ante*, p. 20.

(*n*) The next section describes the manner in which this fund is to be raised. It will differ from the general common fund of the union, though it will be difficult to discriminate the two in the treasurer's hands.

Note to Sect. 229.

(*o*) See the definition in section 4, *ante*, p. 4.

(*p*) These districts were formed under 29 & 30 Vict. c. 90, ss. 5, 7; 30 & 31 Vict. c. 113, ss. 7, 9; and 33 & 34 Vict. c. 53, ss. 3, 4. Such districts may be formed hereafter under section 277, *post*.

Mode of raising contributions in rural district.

230. For the purpose of obtaining payment from the several *contributory places* (*a*) within their district of the sums to be contributed by them, the rural authority shall issue their *precept* (*b*) to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to *some person appointed by them* (*c*), care being taken to issue separate precepts in respect of contributions for *general expenses* and *special expenses*, or to make such expenses respectively separate items in any precept including both classes of expenses (*d*).

Where a contributory place is part of a parish as defined by this Act (*e*), the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish (*f*) the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of *general expenses* out of the *poor rate* of their respective parishes, and with respect to *special expenses* by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a *separate rate* in the same manner as if it were a rate for the relief of the poor, with this exception; (namely,)

That the owner of any *tithes*, or of any *tithe commutation rent-charge*, or the occupier of any *land* used as arable meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance (*g*), shall, where a special assessment is made for the purpose of such rate, be assessed in respect of *one-fourth* part only of the *rateable value* (*h*) thereof, or where no special assessment is made, shall pay in respect of the said property *one-fourth* part only of the rate in the pound payable in respect of houses and other property (*i*):

Provided that where the amount required by any precept *or precepts* (*k*) from a contributory place in respect of *special expenses* is less than *ten pounds*, or is so small that a rate less than *one penny* in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of *general expenses*. Sect. 230.

A *separate rate* under this section shall, as respects the power of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and *all other incidents thereof* (*l*) except the purposes to which it is applicable, and *such exemption as aforesaid* (*m*), and except the *allowance of justices*, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish (*n*).

Where a contribution for *general expenses* (*o*) is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall *from time to time* levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate (*p*), or by a separate rate to be assessed made *allowed* (*q*), published collected and levied in the same manner as a poor rate (*r*). The officers ordinarily employed in the *collection* (*s*) of the poor rate *shall*, if required by the overseers, collect any separate rate made under this section, and receive *out of such separate rate* such remuneration for the additional duty as the overseers with the consent of the vestry may determine (*t*).

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or

Sect. 230. such part thereof for the purpose of defraying the expenses incurred by the rural authority (*u*).

(*a*) See the last section.

(*b*) This is only another term for the order of contribution issued by boards of guardians under the General Consolidated Order, 26th February, 1866. This order will be found in *Glen's Poor Law Orders*, 9th edition, p. 304.

(*c*) This should be the treasurer of the guardians.

(*d*) It is desirable, as far as possible, to include all in one document. There will thus be a saving in many respects of labour and expense.

(*e*) See the definition in section 4, *ante*, p. 4.

(*f*) This may be explained as follows. The contributory place may be formed out of parts of two parishes. In that case it seems that the overseers of the two parishes respectively will be the overseers of the respective parts for the purpose of raising these expenses.

(*g*) These are the same exceptions as are contained in section 211, *ante*, p. 240. The notes on that section should be referred to for the elucidation of the present section.

(*h*) In the former section the term is *net annual value*, which is defined in section 4, *ante*, p. 8, under the word *rackrent*. There is no definition in the Act of *rateable value*, but the two phrases have the same meaning, being, in fact, controvertible terms.

(*i*) This refers to the poor rate. There is great difficulty in dealing with a hereditament consisting of house and land where the valuation list does not sever the value of each. Where a valuation has been made under the Union Assessment Committee Act, 1862, the valuer ought, according to 27 & 28 Vict. c. 39, s. 4, to show the particulars of his valuation, and the respective values of such particulars. Where this has been done the separate values of the house and land can be obtained.

(*k*) These plural words appear to contemplate that several precepts may be issued so as to be outstanding at the same time. Nevertheless, if the whole of the sum required be of the limited amount stated in the text, no special rate can be made.

(*l*) A question has been asked whether the term *incidents* includes the reductions allowed by 32 & 33 Vict. c. 41. The word was found in 30 & 31 Vict. c. 113, which was passed before that Act, and it might therefore appear that the provisions of 32 & 33 Vict. c. 41, did not apply. On the other hand, there seems to be no reason why an *incident* of the poor rate should not apply to a rate made under this section, even although such incident has been created since the passing of the Act in which it was first used.

(*m*) That is, the reduction in the amount of the assessable value. 35 & 36 Vict. c. 79, s. 18, referring to 30 & 31 Vict. c. 113, described these allowances as exemptions.

(*n*) See note (*f*), *supra*.

(*o*) It seems that the overseers may allow several amounts, where they are small, to accumulate until there is a sum of such an amount as will justify the making and collecting of a rate.

(*p*) It is difficult to see how this can be carried out, except by including the amount in the ordinary estimate for that rate.

(*q*) This separate rate must be allowed by the justices, though the separate rate in the previous part of the section is free from that requisition.

(*r*) The exemption previously referred to (*m*) is not referred to here. *Quære*, whether it can be implied.

(*s*) Note, it is the collector who is to be employed, not an assistant overseer who is not engaged in the collection. The officers referred to cannot, as it appears, decline to collect the rate if required to do so, but they are to be remunerated, and can compel the overseers to remunerate them.

(*t*) These words supply a defect in 35 & 36 Vict. c. 18, which omitted to declare whence the remuneration was to come. Care must be taken to ascertain whether the securities given by the officers will apply to this collection. **Note to Sect. 230.**

(*u*) Unless the guardians appoint the succeeding overseers to receive it, the surplus must not be paid to them. In default of any order of the guardians, it must be paid to their treasurer, to be applied, however, as in the text mentioned.

231. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof. Remedy for non-payment by overseers of amount required by precept of rural authority.

That is, of the amount claimed in the precept.

As to the provisions for recovery, see 2 & 3 Vict. c. 84, s. 1; 12 & 13 Vict. c. 103, s. 7; and 14 & 15 Vict. c. 105, s. 9. Though the amount of the precept cannot be disputed, it is probably open to the overseers to dispute the validity of the precept itself before the justices. See *Newbould* v. *Coltman*, 6 Ex. 189; 20 L. J. M. C. 149; 15 J. P. 372; *Pedley* v. *Davis*, 30 L. J. C. P. 374; 10 C. B. (N.S.) 492; 8 Jur. (N.S.) 263; 5 L. T. (N.S.) 253; 26 J. P. 343; *Waddington* v. *City of London Union*, E. B. & E. 370; 28 L. J. M. C. 113; 22 J. P. 367, 703, 755. It should be stated, however, that the justices have not an arbitrary discretion to grant or withhold the process. *Reg.* v. *Boteler*, 4 B. & S. 959; 33 L. J. M. C. 101; 28 J. P. 453; S. C. *Ex parte The Bridgend and Cowbridge Union* (*Guardians of*), 9 L. T. (N.S.) 720.

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority. As to private improvement expenses.

See sections 213, 215, *ante*. It does not apear that such expenses are general or special expenses. Nevertheless, unless the guardians borrow money and charge it on these improvement rates, they must use the money in their treasurer's hands, applicable to sanitary purposes, so far as can be discriminated.

Borrowing Powers (*a*).

Sect. 233. Power to borrow on credit of rates.

233. Any local authority may, with the sanction of the Local Government Board (*b*), for the purpose of defraying any costs charges and expenses incurred (*c*) or to be incurred by them in the execution of the Sanitary Acts (*d*) or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any *such* costs charges and expenses, or for discharging any *such* loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any *fund* or all or any *rates* or *rate* out of which they are authorized to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such *fund* or *rates* or *rate* (*e*).

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to *general expenses* of such authority, on the credit of the common fund out of which such expenses are payable (*f*), and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates.

(*a*) In connection with this part of the Act reference should be made to the following Acts, which are printed in the Appendix, in so far as they are not repealed or relate only to local matters:—The Local Authorities Loans Act, 1875, 38 & 39 Vict. c. 83; the Public Works Loans Acts, 1875 to 1883, 38 & 39 Vict. c. 89; 39 & 40 Vict. c. 31; 41 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 45 & 46 Vict. c. 62; 46 & 47 Vict. c. 42.

(*b*) Sir John Lambert, Secretary to the Local Government Board, in his evidence before the Committee of the House of Commons, in 1875, upon "The Public Works Loans Bill, 1875," gave the following information as to the course of proceeding of that board in the matter. "The local authority, requiring a loan, make an application to the Local Government Board for their sanction; the board then send down to the local authority certain printed forms to be filled up, one of the forms showing the amount of indebtedness, and the rateable value, and other financial particulars. The next step which is taken by the Local Government Board is to send down an inspector to hold a local inquiry after a public notice. At that inquiry any person interested in the district is allowed to appear and be heard, and after the inspector has completed his inquiry, he makes a report to the board, who consider the matter, and if they are satisfied that the circumstances are such as to justify their sanction, then they give it. If a locality apply for a recommendation to the Public

Works Loan Commissioners, and the board are of opinion that a recommendation can properly be given, for the advance of an amount at a reduced rate of interest under the Act of 1872 (now under section 242, *post*), then they may make a recommendation to the Public Works Loan Commissioners accordingly." The application may be made by the clerk of the local authority in a letter upon foolscap folio paper, addressed to the president under cover, directed to the secretary, containing a succinct account of the object of the application and the ground upon which it is made. All accompanying documents and details should, as far as possible, be transmitted upon similar material. Note to Sect. 233.

(*c*) Though it is advisable that the loan should be obtained in advance of the works, this is not absolutely necessary. The costs and charges may have been incurred before the loan is obtained; but the board must not be expected to sanction a loan for expenses long since incurred, though no positive limit has been laid down.

(*d*) See the definition in section 4, *ante*, p. 15. This section does not apply to money borrowed under any local Act though for sanitary purposes. Where sanitary purposes to which this Act applies are provided for in any local Act, it is, nevertheless, competent for the authority, as it seems, to use the powers of this Act for their loans instead of their local Act, observing, however, that this Act does not appear to enable them to re-borrow to pay off loans contracted under the local Act.

(*e*) For the most part the subject to be charged is some rate or fund derived from rates. Municipal corporations in some cases have corporate property, and, perhaps, that can be charged for some of the purposes of this Act. In section 235, *post*, it will be seen that land obtained for sewage purposes may be mortgaged.

(*f*) See section 229, *ante*, p. 263.

(*g*) Thus, for sewage work or for water supply, the special rate may be charged, and for private improvements the private improvement rate is to be charged. The guardians cannot, however, charge the poor rate or the general common fund of the union.

Regulations as to exercise of borrowing powers.

234. The exercise of the powers of borrowing conferred by this Act, shall be subject to the following regulations; (namely,)

(1.) Money shall not be borrowed except for *permanent works*, (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread *over a term of years*) (*a*):

(2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts (*b*) and this Act, in the whole the assessable value for *two years* (*c*) of the premises assessable within the district in respect of which such money may be borrowed:

(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for *one year* of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a *local inquiry* (*d*) and reported to the said board:

(4.) The money may be borrowed for such time, not exceeding

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sixty years, as the local authority, with the sanction of the Local Government Board (*e*), determine in each case (*f*); and, *subject as aforesaid*, the local authority shall either pay off the moneys so borrowed by equal *annual instalments* of principal or of principal and interest, or they shall in every year set apart as a *sinking fund*, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities (*g*), such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned:

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the money for the repayment of which the fund has been established (*h*): Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied:

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of *sixty years* from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying *private improvement expenses* (*i*), or expenses in respect of which they have determined a part only of the district to be liable (*k*), it shall be *the duty* of such authority, as between the ratepayers of the district, to make good, *so far as they can* (*l*), the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

(*a*) This term, *permanent works*, is left unsettled, but the rule by which the Local Government Board has been guided has been to consider the period for which the works may be expected to last, and to sanction a loan for that term, so that if the works will last for ten years, to sanction a loan for that term. This is a liberal interpretation of the phrase *permanent works*.

For reservoirs of water, extensive sewerage works, the purchase of land, and the establishment of gasworks, the board sanction a long term of years, but for

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paving of streets, for the purchase of heavy engines or machinery, or the erection of slight buildings, a short term only is generally allowed.

(*b*) See the definition in section 4, *ante*, p. 15. No reference is here made to the balances of loans obtained under local Acts.

(*c*) The practice which has been adopted in carrying into effect the previous enactments of this provision has been to take the current year's rateable value and double it, and not to take the present and the past year's assessment and add them together. The term *assessable* is referred to the rate to be charged with the loan—namely, in general, the *district rate*. Consequently the value is to be taken from the current valuation lists. It is to be observed that it is not the amount of the rate actually raised which is referred to.

(*d*) See section 293, *post*, as to these inquiries. Under 21 & 22 Vict. c. 98, s. 78, a provisional order, to be confirmed by Parliament, was required for loans when the year's assessable value was exceeded. The sanction of the Local Government Board was substituted by 37 & 38 Vict. c. 49, and this is continued in the text.

(*e*) The board are guided by a consideration of the nature of the works, the existence of undischarged loans, the character of the district, and special local conditions in prescribing the term of years for the loan, and rarely accede to this maximum. It is to be observed that after the expiration of the prescribed period, the local board will have no power to make a rate for the purpose of paying any part of the money borrowed. See *Reg.* v. *Wigan* (*Churchwardens of*), 1 App. Cas. 611; 35 L. T. (N.S.) 381; 25 W. R. 128; 41 J. P. 132.

(*f*) As to loans borrowed under previous sanitary Acts, see section 321, *post*.

(*g*) Note the limited objects of the investment.

(*h*) But what if they apply it to any other purpose? The legislature has not given in this Act to the Local Government Board the power of supervision over this sinking fund which, for some time past, has been introduced in local Acts, where borrowing powers are conferred upon sanitary authorities, in regard to which the board have issued a general order, dated February 27th, 1875. Doubtless, reliance is placed upon the action of the auditor, who is required to see that the requirements of the law are duly executed.

(*i*) See section 213, *ante*, p. 248. The text appears to assume that the authority will borrow money and charge it upon their general district rate, though it is only required for special application. See, however, the second paragraph of section 233, *ante*, p. 270.

(*k*) See section 211, sub-section (4), *ante*, p. 241.

(*l*) This is an indefinite provision. It is doubtful whether any legal obligation can arise out of it.

Power to borrow on credit of sewage land and plant.

235. Where any local authority are possessed of any land works or other property for the purposes of disposal of *sewage* pursuant to this Act, they may borrow any moneys *on the credit* of such lands, works, or other property, and may mortgage such lands, works, or other property, to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands, works, or other property, so mortgaged (*a*). The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act (*b*); but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

Sect. 235. The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed *three-fourths of the purchase money* of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section (*c*).

(*a*) This is a provision only recently introduced into the general sanitary law, though it had been sanctioned in several local Acts, and is not altogether unknown in reference to municipal corporate property

(*b*) It must be observed here that the charge is to be upon the sewage property, and is thus in accordance with 35 & 36 Vict. c. 79, s. 41, but the money to be borrowed is not confined to sewage purposes. It may be applied to any purpose authorized by the Act.

The mortgage referred to is not limited as to time. It may or may not be made redeemable, but apparently it will be open to the mortgagee, in default of express stipulation to the contrary, to require payment at any time, and in default of payment to foreclose.

The power hereby granted is free from the control of the Local Government Board, as their consent to its exercise is not required.

(*c*) Although this section refers to the interest only, it seems to be implied that the local authority may pay off the principal, if so minded, out of the rates.

Form of mortgage.

236. Every mortgage authorized to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

See Form H., which, however, is only the form of a mortgage of rates, not of the land or works referred to in the last section. Mortgages made prior to 35 & 36 Vict. c. 79, were free from stamp duty, but since that Act there has been no exemption.

Mortgages previously secured upon rates under the Sanitary Acts, and upon land under 35 & 36 Vict. c. 79, s. 41, are continued in force by section 343, *post*.

It is convenient in this place again to refer to the Local Loans Act, 1875, 38 & 39 Vict. c. 83, which is printed in the Appendix. It provides greater facilities to local authorities for borrowing money to be secured by debentures, debenture stock, and annuity certificates.

Register of mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within *fourteen days* after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed (*a*). Every such register shall be open to public inspection during office hours

at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding *five pounds* (*b*). Sect. 237.

(*a*) The duty to register any mortgage is presumably upon the local authority. It may therefore be inferred that the total omission to register, or any delay in the registration, will not invalidate the creditor's claim, at least if he has tendered his deed for registration.

(*b*) As to the recovery of this penalty, see section 251, *post*.

Transfer of mortgages.

238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed *duly stamped*, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Schedule IV. to this Act, or to the like effect (*a*).

There shall be kept at the office of the local authority a *register* of the transfers of mortgage charged on each rate, and within *thirty days* after the date of such deed of transfer, if executed within the United Kingdom, or within *thirty days* after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding *five shillings*, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee (*b*).

On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee, his executors, or administrators, shall be entitled to release or discharge any such mortgage or any money secured thereby (*c*).

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding *twenty pounds* (*d*).

(*a*) See Form I. in the Schedule. It would appear that in order to secure the stamp the consideration must be stated and stated truly, but whether the transfer would be avoided by an error or omission may be doubted.

(*b*) This provision is new. The section does not prohibit registration after the specified period of 30 days, nor does it invalidate the transfer if not registered within the time. But until registration the local board are not bound to recognize the transfer. As regards the arrival in the United Kingdom of a

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transfer executed abroad, there must necessarily be some doubt as to the time in many cases.

(*c*) These securities become of the nature of negotiable instruments, and cannot be impeached in the hands of *bonâ fide* holders, though the local authority may have issued them improperly. A board of commissioners empowered by their private Act to borrow money and issue debentures chargeable on their local rates, contracted with one of themselves that he should supply bricks for their works, and he having done so, they gave him debentures purporting to be for money advanced, and such debentures were duly transferred by him to *bonâ fide* holders for value. The supply of the bricks by him was contrary to the provisions of the Act. It was held that whatever might be the case as between him and the commissioners, they were estopped by the debentures from setting up the illegality as an answer to the demands of the transferees. *Webb and Others* v. *Herne Bay, Commissioners of*, L. R. 5 Q. B. 642; 39 L. J. Q. B. 221; 22 L. T. (N.S.) 745; 19 W. R. 241; 34 J. P. 629. And see *In re Romford Canal Company*, 24 Ch. D. 85.

This decision does not extend to securities issued by the local authority without sanction for the loan. It will be seen that the Local Loans Act, 1875, 38 & 39 Vict. c. 83, in the Appendix, provides a means whereby local securities may be granted with an indefeasible title.

(*d*) See, as to the recovery of this penalty, section 251, *post*.

Receiver may be appointed in certain cases.

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and, after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a *court of summary jurisdiction* (*a*); and such court may, after hearing the parties (*b*), appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates *liable* to the payment of the principal or interest, in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid (*c*).

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them (*d*).

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds (*e*), or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum (*f*).

(*a*) See the definition in section 4, *ante*, p. 15. In a case of money borrowed by a corporation under an Act containing no such provision as that in the text, the Court of Chancery refused of itself to appoint a collector of local

rates. *Preston* v. *Yarmouth (Corporation of)*, L. R. 7 Ch. 655; 41 L. J. Ch. 760; 27 L. T. (N.S.) 87; 20 W. R. 875. Note to Sect. 239.

As regards loans granted under previous Acts, section 343, *post*, preserves all rights under those Acts, and consequently the right to a receiver.

(*b*) Hence a summons must be issued to the local authority in default.

It was submitted in a former edition of this work, that this appointment required a stamp under 33 & 34 Vict. c. 97, but since the date of that edition the duties on appointments to offices have been repealed by 38 Vict. c. 23, s. 14.

(*c*) Note carefully what rates are to be collected by this receiver, as he will not have a general authority to collect all rates.

The statute does not enable the receiver to make the rate. The local authority may be compelled by *mandamus* to make it. In the case of a lapsed board the receiver is empowered to make, levy, and collect the rate. See Schedule II., Part II., No. 1, *post*.

(*d*) In practice the ordinary collector of the rates, if there be one, will pay over the rates to the receiver, unless, as may be the case, the collector is himself made the receiver.

(*e*) Perhaps the sum may be made up of principal and arrears of interest.

(*f*) Under 35 & 36 Vict. c. 79, s. 40, money might have been borrowed and the mortgagee might have obtained a receiver to enforce payment of arrears of principal and interest, and in the section referred to there was no specified limit as to the debt. But that part of the section has not been re-enacted.

Rent-charge may be granted in respect of advances made for private improvements.

240. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be *private improvement expenses* (*a*), the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. to this Act (*b*) to such person of a yearly rentcharge issuable out of the premises (*c*), in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rentcharge shall be personal estate (*d*), and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding *thirty years* (*e*) in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding *six* pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates (*f*), and with respect to redemption of private improvement rates (*g*), shall, *mutatis mutandis*, apply to rentcharges granted under this section.

(*a*) See section 213, *ante*, p. 248. If the money advanced has been already secured on some rate, the rent-charge will be an additional security

Note to Sect. 240.

This is a new provision by which a stranger is enabled to acquire a rent-charge upon the land of another, but it is analogous to the enactments by which rents have been charged upon lands in commutation of tithes, except that there an action is given for the recovery of the rent. No action is given by this section. See *Willoughby* v. *Willoughby*, 4 Q. B. 687; *Bedford* v. *Sutton Coldfield*, 3 C. B. (N.S.) 449. But since the case of *Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; 29 L. T. (N.S.) 290; 21 W. R. 912, it would probably be held that an action would lie. And see *The Scottish Widows Fund* v. *Craig*, 20 Ch. D. 208; 51 L. J. Ch. 363; 30 W. R. 463.

21 & 22 Vict. c 98, s. 58, gave a summary remedy for the recovery of these rent-charges, but this part of that section has not been re-enacted, and the form does not contain in it a power of distress. Possibly the case may be considered to fall within section 251, *post*.

A similar provision is contained in the Labourers Dwellings Act, 31 & 32 Vict. c. 130, in the Appendix.

(*b*) See Form K., *post*. It is not now free from stamp duty.

(*c*) Hence, if the premises charged be afterwards severed, the rent will continue a charge upon every portion. With reference to the difficulty arising out of such a state of circumstances, see *Bedford* v. *Sutton Coldfield*, *supra*; *Rivis* v. *Watson*, 5 M. & W. 255.

(*d*) This provision will affect the devolution of the property in the case of intestacy. See the observations of the judges in *Bligh* v. *Brent*, 2 Y. & C. 268; per WOOD, V. C., in *Hayter* v. *Tucker*, 4 K. & J. 248; *Thompson* v. *Thompson*, 1 Coll. 381; *Robinson* v. *Addison*, 2 Beav. 515.

(*e*) It is somewhat uncertain when the rent is to commence, and the form in the schedule does not help further than to determine when the first payment shall be made. *Quære*, whether after the lapse of the thirty years any arrears then outstanding will be recoverable. See on this point *Reg.* v. *All Saints, Wigan*, *ante*, p. 273.

(*f*) See section 214, *ante*, p. 249.

(*g*) See section 215, *ante*, p. 249.

Rent-charges to be registered.

241. Rentcharges issued in pursuance to this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act.

See sections 237, 238, *ante*, as to the default of registration with reference to other charges. See *In re Wynn Hall Coal Company*, L. R. 10 Eq. 515; 39 L. J. Ch. 695; 23 L. T. (N.S.) 348; 18 W. R. 1128.

Power of Public Works Loan Commissioners to lend to local authority.

242. The Public Works Loan Commissioners may, *if they see fit*, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

This section appears to contain a general power to the commissioners to lend money at such rate of interest as appears to them to be satisfactory. The next section enables them to do so at a specific low rate of interest, but under certain restrictions.

The statutes which now govern the advances by the Public Works Loan Commissioners are mentioned in note (*a*) to section 233, *ante*, p. 270, and are set out in full in the Appendix. It is advisable that any local authority

seeking a loan from these commissioners should consult these Acts. Extracts from the regulations made by the commissioners and confirmed by the Treasury will be found in the Appendix. **Note to Sect. 242.**

Power of Public Works Loan Commissioners to lend to local authority on recommendation of Local Government Board.

243. The Public Works Loan Commissioners may (*a*), on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act (*b*), whether for works *already executed* (*c*) or yet to be executed, on the security of any *fund or rate* (*d*) applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be paid within a period not exceeding *fifty years*, and to bear interest at the rate of *three and a half* per centum per annum, or such *other rate* as may, in the judgment of the Commissioners of the Treasury, be necessary, in order to enable the loan to be made without loss to the Exchequer:

Provided,—

(1.) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required (*e*).

(2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872 (*f*).

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than *three and a half* per centum per annum (*g*).

(*a*) In the evidence of Sir John Lambert before the committee referred to at p. 270, *ante*, he stated that an arrangement had been come to that a scale should be settled with reference to the interest to be payable for loans from these commissioners, and the scale is to this effect: "Whenever a loan is for a period not exceeding thirty years, the rate of interest should be 3¼ per cent; and if a loan is for a period of more than 30 years but less than 40, the rate of interest should be 3¾ per cent; and that if the loan is for a period longer than 40 years and less than 50, then the rate should be at the rate of 4 per cent."

(*b*) Note that this section does not apply to loans which are authorized by a local Act, though for purposes such as would be provided for by this Act. Therefore, if this Act empowers the authority to do the same thing, or the local Act does, it would be best to proceed under this Act with reference thereto.

(*c*) These words are evidently used with reference not to the date of this Act, but to the time when the loan is applied for.

Note to Sect. 243.

(*d*) It is presumed that the fund here referred to is the district fund of the urban authority or the common fund of the rural authority. See the next section.

(*e*) Thus loans for paving, and the procuring of expensive engines or machines, are usually made repayable in a short period, say ten years; whereas loans for sewage works, for waterworks, reservoirs, gasworks, or street improvements, are allowed for a longer period, say 40 or 50 years. See note (*a*), to section 234, *ante*, p. 272.

(*f*) This default may have occurred under the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 49, or under section 299, *post*. See these sections.

(*g*) The Public Works Loans Act, 1875, section 33, provided that every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of that Act), or under the security for such loan, should be compounded for or released only under the authority of Parliament in each case. The amending Act of the following year, 39 & 40 Vict. c. 31, s. 6, after reciting that doubts had arisen whether the said enactment would prevent the reduction of interest in accordance with section 243 of the Public Health Act, provides that the commissioners may, on or before the 31st July, 1876, if they think it expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than 4 per centum per annum: Provided always, that nothing in the Public Works Loans Acts, 1875, shall be deemed to take away or abridge the power of loan commissioners under section 244 of the Public Health Act, 1875, to reduce, if they think fit, any interest payable on any such loan to a local authority as in that section mentioned.

It may be well to refer here to the Public Works Loans Act, 1875, section 36, which requires the Local Government Board to satisfy themselves that the money advanced by the commissioners is duly applied to the purpose of the loan. Again, section 37 empowers the Treasury to postpone for periods not exceeding five years, the payment of the instalments of principal and interest, due on loans from the Public Works Loans Commissioners. No such power exists in respect of loans from other bodies or from private individuals.

Borrowing powers of joint boards and certain other authorities.

244. Joint boards and port sanitary authorities under this Act (*a*), and the local board of health of any main sewerage district (*b*) and any joint sewerage board (*c*) constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act or on the credit of sewage land and plant (*d*) as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act.

(*a*) See section 279, *post*, as to the formation of joint boards, and section 287, *post*, as to port sanitary authorities.

(*b*) Main sewerage districts were formed under 11 & 12 Vict. c. 63, s. 10, and were referred to in 35 & 36 Vict. c. 79, s. 58.

(*c*) See 28 & 29 Vict. c. 75, s. 9; 30 & 31 Vict. c. 113, s. 10; 35 & 36 Vict. c. 79, s. 26.

(*d*) See section 235, *ante*, p. 273. Here, however, the purpose of the loan is limited to that for which the joint board is constituted..

Audit.

Audit of Accounts of Local Authorities.

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Accounts of local authorities.

245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

All the accounts of local boards for Local Government Districts and their officers, are to be made up and balanced to the 25th day of March in every year. The form of the accounts is prescribed by the Local Boards Accounts Order, 22nd March, 1880. A similar order was issued as to the Accounts of Improvement Commissioners, dated 9th March, 1881.

In connection with this subject reference should be made to the District Auditors Act, 1879, 42 Vict. c. 6, in the Appendix.

See section 206, *ante*, p. 232, as to the annual report.

Audit where urban authority are a town council.

246. Where an urban authority are the council of a borough the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts (*a*).

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint (*b*). Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund (*c*).

(*a*) For the election and duties of borough auditors, see the Municipal Corporations Act, 1882, sections 25-7, and section 62. The borough treasurer is required to make up his accounts half-yearly, submit them to the auditors, and print a full abstract of his accounts for the year. This abstract is to be open to the inspection of ratepayers, who are also entitled to receive copies at a reasonable price (section 233, sub-section 4). The last section will, if acted upon in boroughs, affect the time and form of the accounts.

(*b*) The auditors of the borough accounts act gratuitously, but as regards these accounts they are to be paid.

(*c*) 1 Vict. c. 78, s. 44, was repealed by the Municipal Corporations Act, 1882, which provides as follows in lieu thereof: "An order of the council for payment of money out of the borough fund, shall be signed by three members of the council and countersigned by the town clerk. Any such order may be removed into the Queen's Bench Division of the High Court by writ of *certiorari*, and may be wholly or partially disallowed or confirmed on motion and

Note to Sect. 246.

hearing with or without costs, according to the judgment and discretion of the court." And by section 242 and Schedule IX., a reference to the new Act is to be deemed to be substituted for a reference to any Act amending the Municipal Corporations Act, 1835. With reference to the construction of the repealed statute, see *Reg.* v. *Lichfield*, 4 Q. B. 893; *Reg.* v. *Greene*, *ib.* 646; *Reg.* v. *Dunn*, 5 Q. B. 959; *Reg.* v. *Prest*, 16 Q. B. 32; *Attorney-General* v. *Wigan* (*Mayor, &c., of*), 1 Kay, 268; *Reg.* v. *Sheffield* (*Mayor, &c., of*), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 24 L. T. (N.S.) 659; 19 W. R. 1159; 36 J. P. 37; *Reg.* v. *Norwich* (*Mayor of*), *ante*, p. 202.

Reference should also be made to the important Act, 35 & 36 Vict. c. 61, the Municipal Corporations (Borough Funds) Act, 1872, in the Appendix.

Audit where urban authority are not a town council.

247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely),

(1.) The accounts of the receipts and expenditure under this Act of such authority (*a*) shall be audited and examined once (*b*) in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union (*c*) *in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:*

(2.) *There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:*

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment (*d*), give at least *fourteen days' notice* (*e*) of the time and place at which the same will be made, and of the deposit of accounts required by this section, by *advertisement* in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever (*f*).

(4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts, mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the

inspection of *all persons interested* (*g*) for seven *clear* Sect. 247.
days (*h*) before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books (*i*), or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding *five pounds* (*k*).

(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary (*l*), and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same (*m*); and if any such person *neglects* (*n*) or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding *forty shillings* (*o*); and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

(6.) Any ratepayer (*p*) or owner (*q*) of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor *as they have* (*r*) by law against disallowances:

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence (*s*) or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person,

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and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8.) Any person aggrieved by disallowance (*t*) made may apply to the Court of Queen's Bench for a new writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor (*u*); and the said court shall have the same powers with respect to allowances disallowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances disallowances and surcharges by the said poor law auditors (*v*).

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within *fourteen days* after the same has been so certified, unless there is an appeal against the decision (*w*); and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person (*x*):

(10.) Within *fourteen days* after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of *such accounts* in some one or more of the local newspapers circulated in the district (*y*).

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or incon-

sistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act (*z*). Sect. 247.

(*a*) These words do not apply to the officers of the authority. They were not mentioned in 21 & 22 Vict. c. 98, s. 60, but were provided for in 37 & 38 Vict. c. 89, s. 38, which is re-enacted in section 250, *post*.

(*b*) Thus it appears that the accounts of a town council, in respect of this expenditure, will, at present, be audited twice every year, while those of urban authorities will be audited only once. Moreover, the dates for the auditing of the accounts differ.

(*c*) The remainder of this and the whole of the following sub-section have been repealed by the District Auditors Act, 1879. Section 5 of that Act provides that the Local Government Board may make the necessary regulations as to the audit of these accounts. The orders of the Local Government Board made under that section have been already referred to, p. 281. They enable the auditor, in addition to the ordinary audit, to hold an extraordinary audit either of the whole or of any portion of the accounts.

(*d*) The auditor must appoint the time of the audit, for as he has other audits to attend to, the obligation of appointing the time of the audit of the urban authority accounts must rest with him.

(*e*) The words *at least* have a technical meaning, and exclude both the first and the last day. See *Reg.* v. *Shropshire* (*Justices of*), 8 A. & E. 173.

(*f*) See 11 & 12 Vict. c. 91, s. 7, which contains a similar enactment in reference to the audit of union accounts.

(*g*) Who are the persons interested? 24 & 25 Vict. c. 61, s. 15, which 21 & 22 Vict. c. 98, s. 60, gave the right of inspection to *owners* and *ratepayers;* but this section has not been altogether re-enacted. This phrase, "persons interested" may possibly include others than ratepayers or owners—for example, contractors.

(*h*) Both the day of the publication and the day of the audit must be excluded. See *Liffin* v. *Pitcher*, 1 Dowl. (N.S.) 767.

(*i*) See also the provision in section 195, *ante*, p. 226. And see the orders of the Local Government Board already referred to as to the attendance of the officers of the authority at the audit.

(*k*) See as to the recovery of the penalty section 251, *post*.

(*l*) It is no answer to the demand of the auditor that the books relate to other matters as well as those under audit. He has a right to see them, in order that he may be satisfied whether or not they relate to the subjects of his audit.

(*m*) This is similar to 4 & 5 Will. 4, c. 76, s. 47, and 7 & 8 Vict. c. 101, s. 33.

(*n*) The word *wilful* is not inserted; therefore, any neglect will subject the person to a penalty. See *King* v. *Burrell*, 12 A. & E. 460.

(*o*) See the provisions as to the recovery of penalties in section 251, *post*, and refer to 7 & 8 Vict. c. 101, s. 33.

(*p*) There is no definition in the Act, except in reference to elections, of the term *ratepayer*. In this place it probably means every person assessed to the rate under audit.

(*q*) See the definition in section 4, *ante*, p. 6.

(*r*) There was an inadvertence in 24 & 25 Vict. c. 61, s. 15, and it has been re-enacted here. The ratepayer has no appeal against a disallowance; he cannot be aggrieved thereby as a ratepayer. The passage should have run "*as is given*," and reference would then have been made to sub-section (8).

(*s*) The responsibility incurred by persons who sign cheques laid before them only for conformity's sake, or in the supposed routine of business, is shown in the recent cases of *The Land Credit Company of Ireland* v. *Lord Fermoy*, L. R. 8 Eq. 7; *Joint Stock Discount Company* v. *Brown*, *ib.* 404.

Some observations upon the duties and powers of the auditor, by ERLE, C. J., are reported in *Bayley* v. *Wilkinson*, 10 Jur. (N.S.) 726, but they are by no means intelligible, and do not appear in the report of the same case in 16 C. B.

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(N.S.) 161. As to the auditor's duties in disallowing illegal payments, see *Barton* v. *Pigott*, L. R. 10 Q. B. 86; 44 L. J. M. C. 5; 31 L. T. (N.S.) 404; 23 W. R. 233; 39 J. P. 454. From this case it appears that the auditor has no discretion in disallowing a payment which is illegal.

As to the notices which the auditors must give to persons not present at the audit before surcharging such persons, see 11 & 12 Vict. c. 91, s. 1, in the Appendix.

(*t*) See sub-section (6), *ante*, and the note thereto.

(*u*) In the Appendix are extracts from the statutes which relate to the powers and proceedings of poor law auditors and the powers of the Poor Law (now the Local Government) Board with reference to appeals arising out of the audit of poor law accounts. They are the following:—7 & 8 Vict. c. 101, ss. 32, 33, 35; 11 & 12 Vict. c. 91, ss. 4, 5, 7, 8, 9, 10; 12 & 13 Vict. c. 103, ss. 8, 9, 11; 39 & 40 Vict. c. 61, s. 38.

With reference to the audit of solicitors' bills, see section 249, *post*.

(*v*) The Poor Law Board disposed of appeals made to them by correspondence between the parties interested, the auditor, and themselves, but occasionally referred matters of fact to their inspectors, who could examine witnesses and parties on oath. They were empowered, when they upheld the auditor's decision, to remit the disallowance and surcharge when they found that the subject matter was incurred under circumstances that made it fair and equitable that it should be remitted upon payment of the auditor's costs (11 & 12 Vict. c. 91, s. 4). 29 & 30 Vict. c. 113, s. 5, enabled them to declare their decision by a certificate signed by the president and countersigned by a secretary or assistant secretary. The Local Government Board continue the same course of action as that of the Poor Law Board.

The auditor has power to surcharge for any deficiency that may on the face of the documents submitted to him appear to have arisen through negligence or misconduct; and the court will not interfere with the auditor's surcharge where, on the face of the documents submitted to him, there is evidence from which he might reasonably have concluded that there had been such misconduct or negligence. *Reg.* v. *Knott*, 15 L. T. (N.S.) 291.

(*w*) The appeal referred to is that given by the previous sub-section to the Queen's Bench Division or to the Local Government Board.

According to the ordinary construction the days are to be counted one day inclusive and the other exclusive.

See 7 & 8 Vict. c. 101, s. 32, which requires payment in respect of poor law accounts to be made within *seven* days after the certificate, and as 11 & 12 Vict. c. 43, s. 11, has imposed a limitation of time upon all proceedings to obtain orders of justices, 12 & 13 Vict. c. 103, s. 9, prevents its operation upon these proceedings before the justices, but requires the auditor to proceed within nine months after the certificate, or within nine months after the determination of any appeal. *Reg.* v. *Tyrwhitt*, 15 Q. B. 249; 4 N. S. C. 266; 14 Jur. 1024; 19 L. J. M. C. 249.

(*x*) Where there has been no appeal, or the appeal has been decided in favour of the auditor's decision, and there has been no remission, the justices must enforce the auditor's decision. They have no discretion in the matter. *Reg.* v. *Tyrwhitt*, 2 E. & B. 77; 17 Jur. 893; *Reg.* v. *Linford*, 7 E. & B. 950; 21 J. P. 308; *Reg.* v. *Finnis*, 1 E. & E. 935; 28 L. J. M. C. 201; 23 J. P. 340. In *Reg.* v. *Fordham*, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85; 37 J. P. 420, it was held that while the certificate of the auditor was *primâ facie* evidence of the amount due, it was not conclusive. Where, therefore, the certificate was for £139, and the overseers upon whom the surcharge was made proved a subsequent payment of £84, it was held that the justices were right in issuing their distress warrant for the balance only. In *Reg.* v. *Master*, L. R. 4 Q. B. 285; 38 L. J. M. C. 73; 19 L. T. (N.S.) 733; 17 W. R. 442; 33 J. P. 436, it was held that a balance due on an auditor's certificate was a debt only, and that the mode given for enforcing it did not make the non-payment an offence. Therefore, when the overseer to whom the certificate related proved his discharge under an adjudication in bankruptcy, it was held that the debt being provable was barred by the order of discharge, and no pr

ceedings could be taken to enforce it. The payment of the sum certified, together with the costs of the proceedings for the recovery thereof, must now be enforced as if it were a poor rate. 47 & 48 Vict. c. 43, s. 11. With regard to the provision as to the auditor's costs, reference should be made to *Prest* v. *Royston Union*, 33 L. T. (N.S.) 564; 24 W. R. 174. That case was the sequel to *Reg.* v. *Fordham*, *supra*. The justices having refused their warrant for more than £84, the auditor applied for a *mandamus* to the justice, but was refused. The overseer then applied to the Local Government Board, who consented to remit the disallowance, on condition that the overseer would pay the auditor's costs incurred before the justice and the court. The auditor, having failed to obtain the performance of his condition by the overseer, brought an action against the guardians for his costs under the corresponding provisions of 7 & 8 Vict. c. 101, s. 32. It was held that, under the circumstances, the defendants were liable. "The intention of the legislature clearly was that such an officer should not suffer the costs incurred by his *bonâ fide* discharge of duties imposed upon him."

Note to Sect. 247.

(*u*) The accounts are those which have been audited. It is left to the clerk to make the abstract. It would have been better if the abstract were made by the auditor, or at least acknowledged and verified by him.

The charges for publication are to be borne by the general district fund.

(*z*) A doubt arose as to whether the accounts of commissioners acting under local Acts were, after 35 & 36 Vict. c. 79, liable to be audited by the district auditor. This was decided in the affirmative in *Reg.* v. *West Bromwich* (*Commissioners of*), Q. B. Trin. Term, 1875; *Gibson* v. *Bell*, 39 J. P. 421. The language of this section in sub-section (1), however, is clear. But there may be other provisions in the local Act with reference to another audit; and where they are contradictory to those of this Act, the latter are to prevail. If they are not so, they may continue to be acted upon. See section 341, *post*.

Where the commissioners have other than sanitary duties to perform, and have, therefore, accounts as to other matters, if they can keep the accounts separate, the auditor referred to in this section will have no authority to audit them; but if they are not distinct, the whole must be submitted to him. And he is entitled to call for all the accounts so as to satisfy himself that they are distinct. This was stated by the court when the cases above referred to were argued.

Audit of accounts of rural authority.

248. The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

See the audit clauses in the Appendix, and see the general order for accounts of guardians, dated 14th January, 1867, in *Glen's Poor Law Orders*, at p. 577.

Note to Sect. 248. It must be remembered that section 9, *ante*, p. 20, declares that the rural sanitary authority is the same body as the board of guardians, and therefore this section, so far as it applies to them, appears to be almost superfluous.

Taxation of bill of solicitor or attorney.

249. On the application of *any local authority* whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the master of the Crown Office, and declared by an order of the Local Government Board (*a*).

If any such bill is not taxed by the clerk of the peace or some other duly authorized taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final (*b*).

(*a*) By a general order, dated April 20th, 1877, the rate was fixed and declared to be 4*d.* per sheet or folio of 72 words.

It will be observed that this section applies to all sanitary authorities.

(*b*) In *Reg.* v. *Hunt*, 6 E. & B. 408; S. C. sub. nom. *Reg.* v. *Napton* (*Overseers of*), 25 L. J. Q. B. 296; 2 Jur. (N.S.) 1138; (*Napton, Ex parte The Overseers of*), 20 J. P. 581, the Court of Queen's Bench held, upon the construction of 7 & 8 Vict. c. 101, s. 39, from which this section is taken, that the auditor's decision in such a case could not be investigated or controlled by them, and the Local Government Board consider themselves equally concluded.

It is to be observed that the taxation by the clerk of the peace is only *primâ facie* evidence of the reasonableness of the charges, and does not conclude the auditor. It is not, moreover, any evidence of retainer.

As regards the charges of local authorities in promoting or opposing bills in Parliament, 35 & 36 Vict. c. 91, s. 6, in the Appendix, must be attended to. See the notes to section 229, *ante*, p. 265.

Auditor to audit accounts of officers.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.

See the notes on section 247, *ante*. This section does not prevent the local authority from exercising their own supervision over the accounts of their officers according to section 195, *ante*.

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

Sect. 251. Summary proceedings for offences, penalties, &c.

251. All offences under this Act, and all penalties, forfeitures, costs, and expenses, under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for (*a*), may be prosecuted and recovered in manner directed by the *Summary Jurisdiction Acts* before a *court of summary jurisdiction* (*b*). The court of summary jurisdiction when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions (*c*), or of some magistrate or officer for the time being empowered by law to do alone any Act authorized to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice (*d*).

(*a*) See section 196, *ante*, p. 227, as to proceedings against officers in default, and section 256, *post*, as to recovery of rates.

(*b*) See the definition of those terms in section 4, *ante*, p. 15. The Summary Jurisdiction Acts are 11 & 12 Vict. c. 43, and 42 & 43 Vict. c. 49.

It is of course impossible to incorporate with this work the provisions of these Acts. At the same time it is necessary to offer a few observations with reference to the Summary Jurisdiction Act, 1879, which was passed after this Act, and has in some respects created important changes in the law. The principal change consists in the distinction drawn by that Act between informations for offences of a criminal nature and complaints for the payment of money. Under the Act of 1848, there was no such distinction so far as concerned the enforcing of a conviction or order: both were enforced by distress and imprisonment. Now by section 6 of the Act of 1879, when, under any Act, whether past or future, a sum of money claimed to be due, is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed to be a *civil debt*, and if recovered before a court of summary jurisdiction, shall be recovered in the manner in which a sum declared by that Act to be a civil debt recoverable summarily, is recoverable under that Act, and not otherwise. And the payment of any costs ordered to be paid by the complainant or defendant in case of any such complaint, are to be enforced in like manner as such civil debt and not otherwise. By section 35, any sum declared by the Act or by any future Act to be a civil debt which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts. The

Note to Sect. 251.

section goes on to provide that a warrant shall not be issued for apprehending any person for failing to appear to answer any such complaint, and that the order is not to be enforced by imprisonment, except after proof of means on judgment summons in the same way as is provided in the case of ordinary debts under section 5 of the Debtors Act, 1869 (32 & 33 Vict. c. 62). This distinction between a conviction on information and an order made on complaint for the recovery of a sum of money, is very clearly set out in the judgment of FIELD, J., in *Reg.* v. *Paget*, 8 Q. B. D. 151; 51 L. M. J. C. 9; 45 L. T. (N.S.) 794; 30 W. R. 336; 46 J. P. 151. The distinction is of peculiar importance with reference to its application to this Act. It happens more than once, for example, in section 21, that a penalty is imposed for an offence which the local authority are authorized to remedy, and that the local authority are empowered to recover summarily the expenses incurred in providing this remedy. In proceeding for the penalty, the local authority lay an information and the defendants may be convicted; in proceeding to recover these expenses, they make a complaint and the defendant is ordered to pay the money, which is thus a civil debt. The importance to the defendant is obvious. If he is convicted of the offence and fined, he may be sent to prison in default of distress; if he is ordered to pay a sum of money he cannot be imprisoned except by order made on judgment summons on proof of means. The test of criminal proceedings is stated by BRAMWELL, B., *Reg.* v. *Whitchurch*, *ante*, p. 102, to consist in the liability to have the penalty enforced by imprisonment in default of distress or payment. See also per COMPTON, J., in *Parker* v. *Green*, 31 L. J. M. C. 133; per PALLES, C. B., in *Reg.* v. *Sullivan*, Ir. Rep. 8 C. L. 404; *Reeve* v. *Wood*, 34 L. J. M. C. 15; *Mellor* v. *Denham*, 5 Q. B. D. 467. The distinction between civil and criminal proceedings is important for other reasons. In a criminal proceeding neither the defendant nor his wife are competent witnesses; if the justices dismiss the information, appeal will not be to quarter sessions; if a case is stated for the opinion of the High Court, appeal to the Court of Appeal will not lie from the decision of the High Court.

As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action for such sums and penalties will not be maintainable. See *St. Pancras* (*Vestry of*) v. *Batterbury*, 2 C. B. (N.S.) 477; 26 L. J. C. P. 243; 3 Jur. (N.S.) 1106; 21 J. P. 424; *Blackburn* (*Mayor of*) v. *Parkinson*, 1 E. & E. 71; 28 L. J. M. C. 7; 5 Jur. (N.S.) 572; 32 L. T. (O.S.) 91; 23 J. P. 262. In the first of these cases it was laid down that when a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy must be adopted. In some cases, however, the remedy in the civil courts is expressly reserved, for example, section 261, *post*, gives an alternative remedy in the county courts for demands under £50.

(*c*) Consequently the court will be a petty sessional court, as defined by section 20 of the Summary Jurisdiction Act, 1879. The same section requires the justices to sit in open court.

(*d*) These words include stipendiary magistrates, who are empowered by statute to do alone whatever is authorized by the Summary Jurisdiction Acts to be done by one or more justices. See 11 & 12 Vict. c. 43, s. 33; 21 & 22 Vict. c. 73; 32 & 33 Vict. c. 34.

As to the appearance of the local authority in legal proceedings, see section 259, *post*.

General provisions as to summary proceedings.

252. *Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose* (*a*).

The description of any offence under this Act in the words of this Act shall be sufficient in law (*b*).

Any exception, exemption, proviso, excuse, or qualification whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant. Sect. 252.

(*a*) This clause was identical with section 11 of the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, and having regard to that section was really superfluous. It was therefore repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43. The following cases may be referred to:—

Where an Act enabled commissioners to pull down dangerous structures and recover the expenses for so doing from the owner in a summary manner according to 11 & 12 Vict. c. 42, it was held that the six months ran from the date of the demand and refusal, and not from the incurring of the expense. *Labalmondiere* v. *Addison*, 1 E. & E. 41; 28 L. J. M. C. 25; 23 Jur. 431; 23 J. P. 261. The subsequent case of *Eddleston* v. *Francis*, 7 C. B. (N.S.) 568; 3 L. T. (N.S.) 270; 25 J. P. 135, appears at first sight to be inconsistent with the earlier decision; but this is not the case, for the court considered that there had been such a demand in 1854 as would have entitled the local board to have proceeded within six months after that time, and proceedings were not in fact taken until 1858. And see *Greece* v. *Hunt*, *ante*, p. 164.

In proceedings under 25 & 26 Vict. c. 102, s. 75, for infringing a building line, the six months under section 107 was held to begin to run from the time when the structure was discovered to be so far advanced as to show the full extent of the projection complained of, and not from the completion of the building. *Brutton* v. *St. George's, Hanover Square* (*Vestry of*), L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. (N.S.) 552; 20 W. R. 84; 36 J. P. 580. This was dissented from in *Bermondsey* (*Vestry of*) v. *Johnson*, L. R. 8 C. P. 440; 42 L. J. M. C. 67; 28 L. T. (N.S.) 665; 21 W. R. 626; 37 J. P. 392, where it was held that the particular section (section 107), limiting the time for proceedings applied only to pecuniary penalties and not to an order under section 75 for the demolition of a building. But in *Morant* v. *Taylor*, 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. (N.S.) 139; 24 W. R. 461; 40 J. P. 501, it was held that 11 & 12 Vict. c. 43, s. 11, which as already stated is identical with the text, applied to every kind of order made by a court of summary jurisdiction, and applied therefore to an order for the demolition of a building under a local Act. In that case the complaint was made more than six months after the completion of the building.

The application of this clause to proceedings under section 150, for the recovery of expenses of paving, &c., in private streets, will be found discussed in the notes to that section. See also section 257, *post*.

It is to be observed that the clause does not apply to continuing offences. See *Mayer* v. *Harding*, 17 L. T. (N.S.) 140; 32 J. P. 421; *Higgins* v. *Northwich Union*, 22 L. T. (N.S.) 752; 34 J. P. 806; *Ranking* v. *Forbes*, 34 J. P. 486; *Marshall* v. *Smith*, L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. (N.S.) 538; 37 J. P. 471; *Rumball* v. *Schmidt*, 8 Q. B. D. 603; 46 L. T. (N.S.) 661; 30 W. R. 949; 46 J. P. 567.

This section applies only to summary proceedings. Penal actions are governed by 35 Eliz. c. 5, as to which see *Dyer* v. *Best*, 4 H. & C. 189; L. R. 1 Ex. 152; 12 Jur. (N.S.) 142; 35 L. J. Ex. 105; 14 W. R. 363; 13 L. T. (N.S.) 753; 30 J. P. 151.

As to the application of this clause to complaints for the recovery of rates, see section 256, *post*.

(*b*) These clauses have been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39, presumably because they are practically identical with the

Note to Sect. 252. Summary Jurisdiction Acts, 11 & 12 Vict. c. 43, s. 14, and 42 & 43 Vict. c. 49, s. 39, sub-sect. (1).

Restriction on recovery of penalties.

253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided (*a*), be had or taken by any person other than by a *party aggrieved* (*b*), or by the local authority *of the district* in which the offence is committed, without the consent in writing of the Attorney-General (*c*): Provided that such consent shall not be required to proceedings which are by the provisions of the Act relating to nuisances or offensive trades authorized to be taken by a local authority in respect of any act or default committed or taking place *without their district*, or in respect of any house, building, manufactory, or place situated *without their district* (*d*).

(*a*) In *Fletcher* v. *Hudson*, 5 Ex. D. 287; 49 L. J. Ex. 793; 43 L. T. (N.S.) 404; 45 J. P. 5, BRAMWELL, L. J., said: "I think the words 'except as in this Act expressly provided,' must mean 'except when there is an express provision that some person may sue who is neither a party aggrieved, nor a local authority, nor a person acting with the consent in writing of the Attorney-General.' In other words, section 253 may be read thus: Proceedings may be taken by a party aggrieved, they may be taken by a person who has the consent of the Attorney-General, and lastly, they may be taken by a person who not being one of the preceding, is expressly authorized to do so. Now I find in the Act three cases, there may be more, in which such persons are expressly so authorized, namely, sections 192 and 193, and rule 70; in each of these it is provided that the penalty may be recovered by any person." In addition to the cases cited by the learned judge, sections 68, 105, and 106 may be referred to as being cases in which proceedings may be taken by persons other than parties aggrieved or persons acting with the consent of the Attorney-General.

(*b*) A ratepayer in the district of the local board is not a party aggrieved by a member of the board voting in a matter wherein such member has an interest, so as to enable the former to maintain an action for a penalty without the consent of the Attorney-General. *Boyce* v. *Higgins*, 14 C. B. 1; 23 L. J. C. P. 5. But *quære* whether this case would now be considered law, having reference to *Fletcher* v. *Hudson*, *supra*, which expressly overrules *Smith* v. *Fieldhouse*, 35 L. T. (N.S.) 602. The same observation applies to *Hollis* v. *Marshall*, 2 H. & N. 755; 27 L. J. Ex. 235; 22 J. P. 210. There a person who was disqualified was returned as member of a board and acted; and it was held that a defeated candidate at the election or a ratepayer in the district was not a party aggrieved. Again in *Rochfort* v. *Atherley*, 1 Ex. D. 511, the defendant who was acting as a chairman of a local board after disqualification, made a complaint to the members thereof as to certain conduct of the plaintiff, who was clerk of the board; the plaintiff fearing that he might be dismissed from his office, resigned it and sued the defendant for a penalty under Schedule III., rule 70. It was held that he was not a party aggrieved within this section. While these decisions may stand as to the construction of the words *party aggrieved*, they are not now of any authority for the proposition that a person other than a party aggrieved may not sue for penalties under Schedule III., rule 70, for the words to which note (*a*) *supra*, refers, have been held to create an exception to the general rule established by this section.

A chairman of a local board was charged with an offence under 11 & 12 Vict. c. 63, s. 28, which corresponds with rule 68 of Schedule III. of this Act. The prosecutor though a member of the board had not been a candidate at the elec-

tion. It was held that he was not a party aggrieved so as to be able to institute the proceedings without the consent of the Attorney-General. *Reg.* v. *Blanshard*, 3 J. P. 280. **Note to Sect. 253.**

By Schedule III., rule 69, *post*, a penalty is imposed upon any one fabricating a voting paper. The appellant was one of two candidates for election to a local board, and was in a minority of five at the close of the poll. The respondents were charged with fabricating a voting paper for three votes in favour of the successful candidate. It was held that the appellant was a party aggrieved within the section. Per LUSH, J.: "Independently of any consideration of the effect of a fabricated vote upon the result of any election, any candidate is aggrieved by the fabrication of a vote within the meaning of the Act." *Verdin* v. *Wray*, 2 Q. B. D. 608; 46 L. J. M. C. 170; 35 L. T. (N.S.) 942; 25 W. R. 274; 41 J. P. 484.

(*c*) In an action where the Attorney-General's consent is required, it would appear to be necessary to allege in the statement of claim that his consent has been obtained. See *Hollis* v. *Marshall*, *supra*.

(*d*) See sections 108, 115, *ante*. In these cases there can be strictly no person aggrieved, and the local board which would institute the proceedings is not the local board of the district.

Application of penalties.

254. Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed (*a*): Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the *general purposes* of this Act.

(*a*) But for this provision penalties would have been payable to the treasurer of the county, borough, &c., under 11 & 12 Vict. c. 43, s. 31, and 40 & 41 Vict. c. 43, s. 6.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 221, provides that where by any Act passed or to be passed, any fine, penalty, or forfeiture, is made recoverable in a summary manner before any justice or justices, and payable to the Crown or to any borough corporate, or to any person whomsoever, the same if recovered before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough; but this section is not to apply to any fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered, if passed since the Municipal Corporations Act, 1835 (5 & 6 Wm. 4, c. 76), directs that the same shall go in any other manner and not to the borough fund. The present Act is therefore within the latter part of the section.

The following cases may be referred to for the purpose of elucidating the text: *Seamen's Hospital Society* v. *Liverpool* (*Mayor of*), 4 Ex. 180; 18 L. J. Ex. 371; *Wray* v. *Ellis*, 1 E. & E. 276; 28 L. J. M. C. 45; 32 L. T. (O.S.) 157; 23 Jur. 624; 7 W. R. 91; 22 J. P. 800; *Receiver of Metropolitan Police District* v. *Bell*, L. R. 7 Q. B. 433; 41 L. J. M. C. 153; *Attorney-General* v. *Moore*, 3 Ex. D. 276; 47 L. J. M. C. 103; 38 L. T. (N.S.) 251; 26 W. R. 366; 42 J. P. 372.

Proceedings in

255. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons,

Sect. 255. it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to such court may appear fair and reasonable (*a*).

certain cases against nuisances.

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceedings under the provisions of this Act relating to *nuisances*, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description (*b*).

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law (*c*).

(*a*) In consequence of the overflow of the sewage from the premises of the respondent and the premises of other persons, it ran some distance to the premises of A., where it accumulated and constituted a nuisance. Whilst it was upon the premises of the respondent and the others it was no nuisance, and became such only when it reached the premises of A. Held, that an order might be made on each party whose sewage assisted in causing the nuisance. *Hendon Union* (*Guardians of*) v. *Bowles*, 20 L. T. (N.S.) 609; 16 W. R. 510; 34 J. P. 19. See also the cases cited in the notes to section 94, *ante*, p. 98, and especially the cases of *Brown* v. *Russell* and *Scarborough* (*Mayor of*) v. *Scarborough Rural Sanitary Authority*.

(*b*) Notwithstanding this provision, it will be advisable to name the person who is subject to the process when he can be ascertained. It is to be observed that this provision is confined to nuisances, and is not of general application.

(*c*) The law does not generally allow of contribution among wrongdoers. See *Merryweather* v. *Nixon*, 8 T. R. 186; 2 Sm. L. C. 546; *Betts* v. *Gibbins*, 2 A. & E. 57. Most of the cases as to nuisances arising under this Act, are misfeasances or criminal acts of nonfeasance, and in such cases it would seem that the rule just mentioned would operate to prevent the recovering of contribution. There may, however, be cases in which contribution may be required.

Summary proceed-

256. If any person assessed to any rate made under this Act (*a*) by any *urban* authority fails to pay the same when due and for the

Sect. 256. Proceedings for recovery of rates.

space of *fourteen* days after the same has been lawfully demanded in writing (*b*), or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing (*b*), any justice may summon the defaulter to appear before a *court of summary jurisdiction* to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an *order* for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter (*c*).

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

(*a*) See sections 209, 217, *ante*.

(*b*) As to the service of this demand, see section 267, *post*. A demand will, it is presumed, be sufficient if made by the collector of the rate.

(*c*) In the case of the poor rate, payment is enforced by distress and imprisonment under 12 & 13 Vict. c. 14. But in enforcing payment of poor rates, justices are not a court of summary jurisdiction, seeing that they do not act under or by virtue of the Summary Jurisdiction Acts. They do not make an order on complaint within the meaning of sections 6, 35, of the Summary Jurisdiction Act, 1879, so as to make the poor rates civil debts within the meaning of these sections. *Reg.* v. *Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49; 42 L. T. (N.S.) 439; 28 W. R. 615; 44 J. P. 248. (The last of these reports is a verbatim report and should be referred to.) But the text provides for the making of an order by a court of summary jurisdiction, and it would seem to follow that urban rates are civil debts. It is further to be observed that the section makes no provision for imprisonment in default of distress.

The provisions of this section are different from those contained in the corresponding section of the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 103. That section provided that in case the defaulter failed to appear according to the exigency of the summons, or no sufficient cause for non-payment were shown, the justice might by warrant cause the same to be levied by distress of the goods and chattels of the defaulter. With reference to this provision it was held that the section did not confer a discretionary power upon the justice, but that he was bound to act ministerially. *Reg.* v. *Newman*, 29 L. J. M. C. 117; 6 Jur. (N.S.) 293. It was also decided that the justices could not, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate. *Reg.* v. *Derbyshire* (*Justices of*), 19 J. P. 772; nor as to the purpose to which the Act was applied, *Luton Local Board* v. *Davis*, 2 E. & E. 678; 29 L. J. M. C. 173; 6 Jur. (N.S.) 580; 8 W. R. 411; 2 L. T. (N.S.) 172; 24 J. P. 677. In fact the duties of justices resembled their duties in enforcing the poor rate.

Notwithstanding the alteration in the text it is submitted that the section must be read as imperative, otherwise the justices would have power to determine when rates are or are not to be paid, whereas it is for the urban authority to remit for poverty. See section 225, *ante*, p. 259. It may be well to refer to the language of the court in *Ex parte Neath and Brecon Railway*, L. R. 9 Ch. D. 263; 43 L. J. Ch. 277; 30 L. T. (N.S.) 172; 22 W. R. 242. In that case JAMES, L. J., observed: "By the courtesy of Parliament when dealing with courts of justice, the word 'lawful' is used, but when it is said that it

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shall be lawful for the court to do a certain thing, it means that it shall be done, and it is in fact unlawful to do anything else." And in *Julius* v. *Oxford* (*Bishop of*), 5 App. Cas. 214; 49 L. J. Q. B. 577; 42 L. T. (N.S.) 546; 28 W. R. 726; 44 J. P. 600, Lord CAIRNS, C., said that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised."

As already stated, the order here required is a new provision. It was not required by the previous statute. *Reg.* v. *Tottenham Local Board, Ex parte Perry*, 1 L. T. (N.S.) 413; 24 J. P. 87. It was therefore held that justices in acting under that statute were not affected by the limitation of time imposed by 11 & 12 Vict. c. 43, s. 11. *Sweetman* v. *Guest*, L. R. 3 Q. B. 262; 37 L. J. M. C. 59; 18 L. T. (N.S.) 52; 16 W. R. 426; 32 J. P. 212. The necessity of an order under the above section therefore introduces a question whether the limit of time prescribed by section 252, *ante*, p. 290, and 11 & 12 Vict. c. 43, s. 11, will apply. The latter section takes effect in every case where upon a complaint a justice is authorized by law to make an order, and section 252 imposes the limitation of time upon every case where a complaint or information is not made or laid within the specified time. It would appear, therefore, that complaint for these rates must be laid within a period of six months after they have been demanded, as required by this section.

Recovery of expenses by local authority from owners.

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act (*a*) or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate (*b*) not exceeding *five pounds* per centum per annum, from the date of service of a demand for the same (*c*) till payment thereof, from any person who is the *owner* (*d*) of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a *charge on the premises* in respect of which they were incurred (*e*). In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand (*f*).

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be *binding and conclusive* on such owner, unless within *three* months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice *dispute the same* (*g*).

The local authority may, by order (*h*), declare any such expenses to be payable by annual instalments within a period not exceeding

thirty years, with interest at a rate not exceeding *five pounds* per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a *summary manner* (*i*) from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act (*k*). Sect. 257.

(*a*) See sections 23, 36, 41, 62, 150, 158, *ante*.

(*b*) It is not clear who is to settle the amount of this rate. Probably the justices or the court.

(*c*) This supplies a defect in previous litigation which was felt in *Wallingford* or *Wallington* v. *Willes*, 16 C. B. (N.S.) 797; 33 L. J. M. C. 233; 12 W. R. 917; 10 L. T. (N.S.) 784, as to the commencement of the interest.

(*d*) See the definition of the word *owner* in section 4, *ante*, p. 6. And see *Reg.* v. *Swindon Local Board*, *ante*, p. 165.

As to summary proceedings for the recovery of paving expenses under section 150, see that section and the notes thereto at pp. 161-7, *ante*.

(*e*) So that successive owners are liable until the expenses are reimbursed with interest. *Plumstead Board of Works* v. *Ingoldby*, *ante*, p. 165. Though the owner is personally liable in so far as summary proceedings may be taken against him, yet the words of the text which make the expenses a charge on the premises, do not create a personal liability. Accordingly the Court of Appeal refused leave to prove for them in an administration action. *West* v. *Downman*, *ante*, p. 167.

This section "imposes a charge on the premises immediately the expenses have been incurred, and there is no limitation of time during which that charge is to remain effective. The condition upon upon which the charge is made to arise is nothing but this, 'where the local board have incurred expenses for the repayment whereof the owner is made liable.' Directly therefore the local board have incurred such expenses, the section must be read as if immediately after that there came these words, 'such expenses shall be a charge on the premises.' Therefore, directly from the moment the expenses which are named in that section have been incurred, such expenses are a charge on the premises, that is, the charge is imposed then and there by the statute. Moreover, the phrase is grammatically a phrase of addition, because the earlier part of the section names the other remedies to which the board may resort, and it adds the words 'and such expenses shall be a charge on the premises.' Therefore it seems to me that upon the reading of that section, this is a charge the moment the expenses are incurred, and it is a charge which exists although other remedies exist at the same moment that that commences, or other remedies may by different processes be made to arise either as against the owner, who is, in the first place, the person liable, or as against other persons. It is true that the owner is liable to another remedy the moment the expenses have been incurred which he ought to have defrayed himself. There is a remedy against him personally for the whole sum, which remedy is to be enforced within six months; but if the board claim the whole payment from him at once, yet fail to recover it from him personally, and there are no means of recovering it from him by distress, or if they pass by the personal remedy, then, if they have done nothing to prevent them from putting the charge into effect, I see no reason why the charge might not then and there be put into effect for the whole sum as against the owner. But the board has also the power of causing other remedies as against other persons to arise. They may declare the expenses to be private improvement expenses (see sections 150, 213). That is the first resolution which they may pass. Having done that they may deal with that in one of two ways. Having declared the expenses to be private

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improvement expenses, they may make a private improvement rate, and if they do so, they at once have a remedy against the occupier, and they may distrain upon the occupier, and the occupier is given a remedy over against the owner to some extent. If they do make an improvement rate, they can only put their remedies upon that rate into effect, under what are called Jervis's Acts; and if they do attempt to put their remedy into effect against the occupier, they are at once as against him limited in time. They may not only attempt to use the summary remedy, but as it was said may up to a certain amount sue in the county court, and then the decision in *Tottenham Local Board* v. *Rowell* (1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135), which if I may venture to say so, was perfectly right, is that the same limit of time applies. But that limit only affects remedies which they have as against the occupier or owner personally by summary proceedings. Well, having declared those expenses to be private improvement expenses, there is another mode in which they may deal with it. They may come to a resolution that the whole sum shall be divided into instalments and spread over a certain number of years not exceeding thirty. If they do that, that at once gives them remedies against the occupier and against the owner. Having made the sum payable by instalments, I incline to agree that it makes the Act more reasonable and more fair, to say that they could not retract that and insist either by putting the charge into effect or otherwise, upon an immediate payment of the whole. Having once made the sum payable by instalments it must so remain; but then, it being payable by instalments, they have a summary remedy against the occupier or against the owner as each instalment falls due. Although they have all these remedies they may be ineffectual, because the occupier may be unable to pay, the owner may be unable to pay, there may not be sufficient to enable them to recover by distress; all those remedies may fail, but if they do fail, it seems to me that there is nothing which upon the failure of these remedies has done away with that charge, which existed from the beginning, and which is not limited in time upon the arising of any condition subsequent by any words in the Act from the beginning to the end, but when the payment has come to be a payment by instalments, then I think that if the charge is to be made effective it could only be made effective for instalments in arrear . . . All the remedies which are either existing at the time when the charge takes effect, or which are by following the forms of the statute, made to arise after that charge has taken effect, have nothing to do with the charge—they make it neither greater nor less. If these remedies fail, or are not put into effect, nevertheless the charge which exists absolutely independently of them, may always be made effective by the process of the court, and there is no limitation of time as to that, except, I suppose, the ordinary Statutes of Limitation." Per BRETT, L. J., in *Tottenham Local Board* v. *Rowell*, 15 Ch. D. 378; 50 L. J. Ch. 99; 43 L. T. (N.S.) 616; 29 W. R. 36.

The charge is one, not on the interest of any particular owner of the premises, but on the total ownership, that is to say, on the respective interest of every owner for the time being in proportion to the value of his interest. Therefore, where the owner of leasehold premises had mortgaged them for the full term less a nominal reversion, it was held that the mortgagee was liable, and JESSEL, M. R., made an order that the sum claimed with interest was a charge on the mortgagee's interest in the premises. *Birmingham* (*Corporation of*) v. *Baker*, 17 Ch. D. 782; 46 J. P. 52.

It was held that the charge might be enforced against the owner of the premises for the time being, although he was not the owner at the time the works were completed, and although the local authority had omitted to enforce their summary remedy against the then owner. *Sunderland* (*Mayor of*) v. *Alcock*, 51 L. J. Ch. 546; 46 L. T. (N.S.) 377; 30 W. R. 655.

(*f*) As to the limitation of time, see section 252, *ante*, and the cases cited in the note to section 150, *ante*, p. 163. See also the cases cited at p. 164, as to the service of the notice of demand.

It is only upon this notice that the board can recover summarily, and that

appeal lies to the Local Government Board under section 268, *post*. See per BRETT, L. J., in *Reg.* v. *The Local Government Board*, cited in the notes to section 268, *post*. Note to Sect. 257

(*g*) With reference to the conclusive character of the apportionment, see *Cook* v. *Ipswich Local Board*, *ante*, p. 167; *Shanklin Local Board* v. *Millar*, *ante*, p. 166; *Tunbridge Wells Local Board* v. *Akroyd*, *ante*, p. 167; *Hesketh* v. *Atherton Local Board*, *ante*, p. 159. From the case last mentioned it would seem that the failure to dispute the apportionment does not prevent the owner when before the justices from raising questions as to his being legally liable.

This dispute is to be settled by arbitration. See section 150, note (*l*), *ante*, p. 167.

(*h*) This is an alternative provision for that which is given by section 213, which deals with private improvement rates. That section enables a rate on the occupier for these expenses. This section enables the authority to make an order on the owner for the same, and to charge the amount on the premises, the amount to be payable by annual instalments, and the rate of interest to be settled by themselves. It would seem that the local authority must in the first instance decide which course they will adopt (see *Wilson* v. *Bolton* (*Mayor of*), *ante*, p. 168), but their decision will not affect their right to enforce the charge on the premises created by the first paragraph of the section. See the judgment of BRETT, L. J., in note (*e*), *supra*.

(*i*) See section 251, *ante*, p. 289.

(*k*) See section 214, *ante*, p. 248.

258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several rate-payers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed. Justices may act though members of local authority or liable to contribute.

This section merely removes the disqualification of a justice by reason of his being a member of a local authority. It does not enable him to act in cases where he has a pecuniary interest, or where he has, as a member of the local authority, taken part in setting the law in motion. This will appear from the following cases:—

H., the owner of a farm in the parish of Edmonton, bounded by the river Lea, entered into an agreement with the Enfield Local Board, under which he received the sewage of the Enfield district, and disposed of it over his farm. After a few months disagreements arose, and the Enfield Board took proceedings against H. to enforce the agreement. While these were still pending, H., after notice given to the board, diverted the sewage from his farm through a pipe into the old open channel or watercourse in the parish of Edmonton, through which the sewer had been used to flow into the river Lea. On this the Edmonton Local Board threatened proceedings against the Enfield Board for the nuisance; and the Lea Conservancy took out summonses under their Act against H. for having opened the pipe into the channel, &c., and for continuing the use of it. On the summonses coming on for hearing, M., who was chairman of the Enfield Board, and had taken an active part in its proceedings, sat with three other justices on the bench. H. objected to M. sitting as a justice, but he remained, and H. was convicted in penalties. A rule for a *certiorari* was then obtained for the purpose of quashing the convictions, on the ground that M. was an interested justice. On showing cause M. made affidavit that, though he sat on the bench, he took no part until the other justices had unanimously determined to convict, when he proposed a mitigation of

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the penalties, and that he did not sign the convictions. Held, that M. had such an interest as might give him a real bias in the matter; consequently, he ought not to have sat as a justice, and it was immaterial what part he really took in the matter; and the court made the rule absolute with costs against M. *Reg.* v. *Meyer* or *Harrison*, 1 Q. B. D. 173; 34 L. T. (N.S.) 247; 24 W. R. 392; 40 J. P. 645.

Complaint having been made to the Local Government Board of a nuisance upon premises belonging to B., in the borough of W., the board communicated with the town council of W. as the urban sanitary authority, and required them to abate the nuisance. The council having made enquiries passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the town council when the resolution was passed. Held, that the councillors who were justices had such an interest as might give them a bias in the matter; that, consequently, they ought not to have sat as justices on the hearing of the summons, and that the rule for a *certiorari* to quash the order must be made absolute. *Reg.* v. *Milledge and Others, Justices of Weymouth*, 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T. (N.S.) 748; 27 W. R. 659; 43 J. P. 606, 650. But where justices who were members of a town council, and as such had taken an active part in the making of an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), sat to hear a complaint of non-observance of the order, it was held they had no such interest in the subject matter of the complaint as to oust their jurisdiction. *Reg.* v. *Huntingdon* (*Justices of*), 4 Q. B. D. 522; 43 J. P. 767. It will be observed that in this case the justices had not taken any part in the ordering of the prosecution.

By a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for that purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a justice, who was also an alderman and a member of the corporation, but it came on for hearing before justices none of whom were connected with the corporation. It was held that the justices could not properly proceed with the hearing, as the summons had been issued by one who was virtually a prosecutor. *Reg.* v. *Gibbon and Another, Justices of Lancashire*, 6 Q. B. D. 168; 29 W. R. 442. This decision was disapproved of in *Reg.* v. *Handsley and Others, Justices of Burnley*, 8 Q. B. D. 383; 51 L. J. M. C. 137; 30 W. R. 368; 46 J. P. 119. In that case it was laid down that where by statute a member of a town council may act as a justice in matters arising under the Act, in order to disqualify him from acting it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is a member are the prosecutors, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. An officer of a corporation appointed to collect the borough rate obtained a summons against a ratepayer in arrear. In so doing he acted in the discharge of his duty, but upon his own responsibility, and without consulting the council. At the hearing the justices dismissed the summons on the ground that one of the sitting magistrates being a town concillor was thereby disqualified from adjudicating upon the summons. On motion for a *mandamus*, it was held that there was no ground for supposing either substantial interest or likelihood of bias, and consequently no disqualification. But although the mere fact that a justice is a member of the local authority does not disqualify him from acting in cases arising under this Act, yet if he be present when the prosecution is resolved upon, he cannot afterwards sit and determine the case. Therefore, where a justice was a member of a town council, and was present when a prosecution for selling unsound meat was resolved upon, it was held that he was disqualified from sitting to hear the summons. *Reg.* v. *Lee*, 9 Q. B. D. 394; 30 W. R. 750.

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The interest which is sufficient to disqualify need not be a direct interest. Thus, at a special sessions for appeals against poor rates the chairman of the magistrates, who was himself appellant in one of the cases for hearing, took part in the decision of all the cases except his own. When his own case was called on he left the bench, and went to the body of the court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them:—Held, that the chairman, being a litigant in a matter similar to the other matters before the court, was disqualified from acting as a justice, and that the orders were bad. *Reg.* v. *Great Yarmouth (Justices of)*, 8 Q. B. D. 525; 51 L. J. M. C. 39; 30 W. R. 460; 46 J. P. 148.

Where a justice is disqualified on the ground of interest, it is open to the parties to the case to waive the objection. If they acquiesce in his acting after knowledge of the disqualification, they cannot afterwards object. See *Reg.* v. *Richmond JJ.*, 8 Cox C. C. 314; 8 W. R. 562; 24 J. P. 422; *Ex parte Ilchester*, 25 J. P. 56; *Reg.* v. *Kent JJ.*, 44 J. P. 298; *Wakefield Local Board* v. *West Riding and Grimsby Railway Company*, L. R. 1 Q. B. 84; 6 B. & S. 794; 12 Jur. (N.S.) 160; 35 L. J. M. C. 69; 13 L. T. (N.S.) 590; 14 W. R. 100; 30 J. P. 628.

There is no restriction here as in 11 & 12 Vict. c. 63, s. 132, and 16 Geo. 2, c. 18, as to the justice acting alone or at quarter sessions. And now, by the Justices of the Peace Act, 1867, 30 & 31 Vict. c. 115, in order that justices may act in the execution of Acts in some cases in which they would otherwise be incapable of acting, it is provided that a justice shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners or trustees, or any other local authority, by reason only of his being one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expense in diminution of which such penalty will go.

Appearance of local authorities in legal proceedings.

259. Any local authority may *appear* before any court or in any legal proceeding by their clerk, or by any officer or member authorized generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorized shall be at liberty to institute and carry on any proceedings which the local authority is authorized to institute and carry on under this Act.

The appearance mentioned in this section refers to the appearance in court. The clerk may appear without any authority, but any other officer must have an authority, either given generally or for the special proceeding. Thus the inspectors of nuisances may have such general authority, but it should be in writing, containing a copy of the resolution as entered in the minutes. As regards the practice of justices, it must be noticed that where they refused to determine a complaint under 11 & 12 Vict. c. 63, without the attendance of the clerk of the local board, the Court of Queen's Bench refused to interfere. *Ex parte Leamington Local Board*, 5 L. T. (N.S.), p. 637.

A question has been asked upon the word *institute*, whether it applies to notices of nuisances, and of other matters which may or may not be followed by proceedings in court. The better opinion appears to be in the negative.

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29 & 30 Vict. c. 90, s. 48, from which this section is taken, extended the provision in 18 & 19 Vict. c. 121, s. 5, which had restricted the appearance of the officer to the particular case in which directions had been given. See *The Isle of Wight Ferry Company* v. *Ryde Commissioners*, 25 J. P. 454.

Name of local authority need not be proved.

260. In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

This is a new section. It seems to be rather *ex majori cautelâ*.

Demands below £50 may be recovered in county courts.

261. Proceedings for the recovery of demands below *fifty pounds* (*a*), which local authorities are empowered to recover in a summary manner (*b*), may, at the option of the local authority, be taken in the county court as if such demands were *debts* within the cognizance of such courts (*c*).

(*a*) This is an increase of the limit in the statute 24 & 25 Vict. c. 61, s. 24.

(*b*) See section 251, *ante*, p. 289. This section applies, therefore, only to sums which can be recovered summarily—not to those which can be recovered in other ways, as, for example, the costs, &c., to which section 104, *ante*, p. 106, relates.

(*c*) The limitation of time imposed by this Act in section 252, *ante*, p. 290, upon summary proceedings is also applicable to the proceedings taken in the county court. *Tottenham Local Board* v. *Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. (N.S.) 887; 25 W. R. 135; following *West Ham Local Board* v. *Maddams*, 1 Ex. D. 516 *n.*; 33 L. T. (N.S.) 809; 40 J. P. 470.

It may be questioned whether, if the local board take summary proceedings and fail, they can afterwards bring an action in the county court, or *vice versâ*. Probably they could not. But the failure in either case does not affect the power of the local board in respect of the charge on the premises under section 257. See the remark of BRETT, L. J., in the notes to that section.

Proceedings not to be quashed for want of form.

262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by *certiorari* or any other writ or process whatsoever into any of the *superior courts* (*a*): Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates (*b*).

(*a*) Reference is apparently made here to section 269, *post*, p. 317. The Act does not contain any definition of the term superior courts, but the text evidently refers to the High Court of Justice.

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Notwithstanding this provision, a writ of *certiorari* will be granted where the proceedings show on the face of them a want of jurisdiction. *Reg.* v. *Gosse*, 3 E. & E. 277; 30 L. J. M. C. 41; 3 L. T. (N.S.) 404; *Broughton Local Board, re*, 12 L. T. (N.S.) 310; *Reg.* v. *Staffordshire* (*Justices of*), 16 L. T. (N.S.) 430; *Reg.* v. *Rose* or *Wood*, *ante*, p. 215; *Colonial Bank of Australasia* v. *Willan*, L. R. 5 P. C. 417; 43 L. J. P. C. 39; 30 L. T. (N.S.) 237; 22 W. R. 516. In the case last mentioned it was laid down that when a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or of manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached. Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try. *Ibid.* And see *Bradlaugh, Ex parte*, 3 Q. B. D. 509; 43 J. P. 125, and the cases cited in *Paley on Convictions*, 6th edition, at p. 430.

Where both parties agreed to waive this provision, and stated a case for the opinion of the court, the fact that the corresponding section in 11 & 12 Vict. c. 63, had taken away the *certiorari*, was held not to prevent the court from determining the question. *Reg.* v. *Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204; 3 Jur. (N.S.) 1076; 22 J. P. 243.

As to the practice relating to the renewal of convictions, &c., by *certiorari*, see *Paley on Convictions*, chap. iv., s. 2.

(*b*) This proviso was inserted to meet the difficulties which arose in cases such as *Reg.* v. *Fielding*, 17 J. P. 243; *Reg.* v. *Staffordshire* (*Justices of*), 16 L. T. (N.S.) 431; *Reg.* v. *Chantrell*, L. R. 10 Q. B. 587; 44 L. J. M. C. 94; 33 L. T. (N.S.) 305; 23 W. R. 707; 39 J. P. 472. It is now rendered unnecessary, so far as regards cases stated by quarter sessions, for the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40, provides that a writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination of a superior court. In *Clark* v. *Alderbury Union*, 29 W. R. 334, it was held that the provision rendered a *certiorari* unnecessary to bring up a case stated by sessions on a rating appeal, and that the clerk of the peace on receiving notice from the solicitor of the party requiring it, should send up the case to the Crown office.

False evidence punishable as perjury.

263. Any person who on any examination *on oath* (*a*), under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

(*a*) See 13 & 14 Vict. c. 21, the effect of which is stated, *ante*, p. 106.

Notice of action against local authority, &c.

264. A writ or process shall not be sued out against or served on any *local authority*, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of *one month* after notice in writing

Sect. 264. has been served on such local authority member officer or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served; and unless such notice is proved the jury shall find for the defendant (*a*).

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards (*b*), and shall be tried in the county or place where the cause of action occurred, and not elsewhere (*c*).

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the court, at any time before trial, pay into court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or judgment be given for defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

(*a*) When a statute requires notice of action to be given to any person for anything done, &c., under its provisions, such notice is necessary in those cases only in which the party against whom the action is brought has had reasonable grounds for supposing that the thing done by him was done in execution of or under the authority of the Act. *Cook* v. *Leonard*, 6 B. & C. 351; *Norris* v. *Smith*, 10 A. & E. 188; *Cox* v. *Reid*, 13 Q. B. 558; 13 Jur. 563; 18 L. J. Q. B. 216; *Booth* v. *Clive*, 10 C. B. 827; 15 Jur. 563; 20 L. J. C. P. 151. The question on which the right to notice turns is, whether the defendant acted in honest ignorance or belief that he was acting by reason of his office. This question is entirely for the judge, and to enable him to decide it, he must receive so much of the evidence as will raise the question. *Arnold* v. *Hamel*, 9 Ex. 404; 2 C. L. R. 499; 23 L. J. Ex. 137. It is not necessary that the defendant should at the time of doing the act be cognizant of the existence of the Act giving him such protection, or that he should be acting strictly in pursuance of it. *Reid* v. *Coker*, 13 C. B. 850; 17 Jur. 990; 1 C. L. R. 746; 22 L. J. C. P. 201; *Danvers* v. *Morgan*, 1 Jur. (N.S.) 1051. And it is enough if the defendant honestly and *bonâ fide* believed that he was acting in pursuance of the Act, whether there was reasonable ground for such belief or not, the proper question for the jury being whether he *bonâ fide* believed in the existence of a state of facts which, if they had existed, would have afforded a defence to the action. *Herman* v. *Seneschal*, 13 C. B. (N.S.) 392; 32 L. J. C. P. 43; 6 L. T. (N.S.) 646; 11 W. R. 184; *Roberts* v. *Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65; 9 L. T. (N.S.) 727; 12 W. R. 253; *Heath* v. *Brewer*, 15 C. B. (N.S.) 803; 9 L. T. (N.S.) 653; *Chamberlain* v. *King*, L. R. 6 C. P. 474; 40 L. J. C. P. 273; 24 L. T. (N.S.) 736; 19 W. R. 931; *Agnew* v. *Jobson*, 47 L. J. M. C. 67; 42 J. P. 424. In the last-mentioned case, LOPES, J., said

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that though the defendant might have acted *bonâ fide*, believing he had authority, yet there was no fact upon which such belief could be based, and therefore that notice was not necessary.

The defendant contracted with a local board for the digging of wells for the better supply of water, the work to be done to the satisfaction of the local board or their surveyor, and the digging to be done under the direction of the surveyor. The hole made in digging one of the wells in a highway was negligently left without sufficient light, in consequence of which the plaintiff's horse in passing fell into the hole and was injured, and for the damage thereby occasioned to the plaintiff an action was brought without notice. Held, that the defendant was a person acting under the direction of the local board within the meaning of section 139 of the Public Health Act, 1848, and that the action was in respect of something done or intended to be done under the provisions of the Act, and therefore that the defendant was entitled to notice of action. *Newton* v. *Ellis*, 5 E. & B. 115; 24 L. J. Q. B. 337; 1 Jur. (N.S.) 850; 19 J. P. 805. It will be observed that in this case the action was brought against a contractor. But in a case decided in 1879, an action was brought for damage to the plaintiff's colt by the defendant's negligence in filling in a drain, The drain was made by the defendant under a contract with the guardians acting as the rural sanitary authority. The defence was that no notice of action had been given. The court held that although a contractor would have been a person entitled to notice under the words of the Public Health Act, 1848, which entitled any member of the local board, or officer of health, clerk, surveyor, inspector of nuisances, or other officer or person "whomsoever acting under the direction of the said local board" to notice of action, these words had been purposely restricted and altered so as to exclude contractors. *Stringer* v. *Barker*, W. N., 1879, p. 127. The same observations apply to the cases as to contractors decided under the Metropolis Management Act, 1862, 25 & 26 Vict. c. 102, s. 106, in which the same words are used as those in the Public Health Act, 1848. Some of the cases which are cited below must, therefore, be read subject to these observations when they are sought to be used as authorities for the construction of the text.

The plaintiff and defendant were occupiers of adjoining houses, which were separated by a covered passage. The house of the defendant was a public-house, and the public were accustomed to commit nuisances against the wall of the plaintiff's house. The district board thereupon directed their inspector of nuisances to cause a urinal to be put up against the plaintiff's wall, and the inspector gave authority to the defendant to erect it, which he accordingly did, the district board paying a portion of the expense. It was held that the defendant was entitled to notice of action under the Metropolis Management Act, 1862, 25 & 26 Vict. c. 102, s. 106. *Chambers* v. *Reid*, 13 L. T. (N.S.) 703; 14 W. R. 370; 30 J. P. 231. But where under the same Act a district Act required a person to drain into a sewer, and in doing so he committed a trespass, it was held that he was not entitled to notice, as he was acting, not under the orders or directions of the board, or by their authority, but simply in performance of a duty imposed upon him by statute, which, if he omitted, the board were empowered to call upon him to perform. *Doust* v. *Slater*, 10 B. & S. 400; 38 L. J. Q. B. 159; 20 L. T. (N.S.) 525; 33 J. P. 581.

The defendant, a contractor, employed by the Metropolitan Board of Works to enlarge a sewer running into a tidal creek, erected a dam in the sewer, the water above which was removed by pumping. Owing to his negligence in not working the pumps, the sewage flowed back into the plaintiff's premises and injured them. Held, that the defendant was entitled to notice under 25 & 26 Vict. c. 102, s. 106, the injury being occasioned by acts done or intended to be done under the powers of the board under the Act within the meaning of that section. *Poulsum* v. *Thirst*, L. R. 2 C. P. 449; 36 L. J. C. P. 225; 16 L. T. (N.S.) 324; 15 W. R. 766.

The defendant, a contractor under a district board, was engaged in constructing a sewer, and employed men with horses and carts. The men so

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employed were allowed an hour for dinner, but were not permitted to go home to dine, or to leave their horses and carts. One of the men went home, about a quarter of a mile out of the direct line of his work, to his dinner, and left his horse unattended in the street before his door. The horse ran away and damaged certain railings belonging to the plaintiff. The jury found that the driver was acting within the scope of his employment, and it was held that the defendant was not entitled to notice, the thing complained of not being a thing done or intended to be done under the powers of the board, or under 25 & 26 Vict. c. 102. *Whatman* v. *Pearson*, L. R. 3 C. P. 422; 37 L. J. C. P. 156; 18 L. T. (N.S.) 290; 16 W. R. 649.

The defendants, a local board, left unfenced a goit adjoining a public footpath within their district, by reason whereof the plaintiff's husband, while using the footpath, fell into the goit and was drowned. It was held that the defendants were entitled to notice of action, the alleged cause of action being the continued non-performance of a duty imposed upon them by the Act, and therefore a thing done or intended to be done under the provisions of the Act. *Wilson* v. *Halifax* (*Mayor, &c., of*), *ante*, p. 151. Per KELLY, C. B.: "It is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of those clauses requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament."

The defendants, surveyors of highways, appointed under 5 & 6 Will. 4, c. 50, received payment from the plaintiff of an assessment upon a highway rate which had been improperly or irregularly made. The defendants had intended to act in the performance of the duties of their office. In an action to recover back the money, it was held that they were entitled to notice of action. Per LUSH, J.: "The question was whether the defendants in making the rate intended to do what they were authorized to do. It is clear that they *bonâ fide* believed they were doing what the law allowed, and that is all that is needed to entitle them to the protection of the statute." Per BLACKBURN, J.: "It has long been decided that such a provision is intended to protect persons from the consequences of committing illegal acts which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified in its terms, and cannot be defended by its provisions." *Selmes* v. *Judge*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; 24 L. T. (N.S.) 904; 19 W. R. 1110; 35 J. P. 645.

A local board having authority to moor a landing stage in a navigable river, fastened it with an anchor, but omitted to bury the same properly, by reason of which omission a vessel in navigating the river suffered damage. Held, following *Wilson* v. *Halifax* (*Mayor of*), *supra*, that notice was necessary. *Joliffe* v. *Wallasey Local Board*, L. R. 9 C. P. 62; 43 L. J. C. P. 41; 29 L. T. (N.S.) 582; 38 J. P. 40.

To an action for slander the defendant pleaded that the words were spoken while he was acting as clerk of the markets, in pursuance of the Acts relating to municipal corporations in Ireland, which statutes entitled him to a month's notice of action for any act done in pursuance of them. The plea was held good on demurrer, for the words spoken while acting in pursuance of the statutes were as much within their protection as acts done. *Murray* v. *McSwinney*, Ir. Rep. 9 C. L. 545.

The omission to repair the handrail of a bridge over a brook was held to be something done in pursuance of, or under the authority of, 5 & 6 Will. 4, c. 50, so as to require notice under section 109 of an action for an injury sustained by reason of such omission. The cases of *Wilson* v. *Halifax* and *Joliffe* v. *Wallasey Local Board* (*supra*) were said not to be distinguishable. *Holland* v. *Northwich Highway Board*, 34 L. T. (N.S.) 137; 40 J. P. 517.

Defendants, an urban authority, gave the plaintiffs notice to pave under section 150, and in default themselves executed the work, and the plaintiffs on

demand paid the amount apportioned to them. Both parties then believed that the street was not a highway repairable by the inhabitants, but some time afterwards it was discovered that it was such a highway, and the plaintiffs sued to recover back the amount. It was held by the court of appeal that the claim was for something done, or omitted to be done, within this section, and that notice was necessary. *Midland Railway Company* v. *Withington Local Board*, 11 Q. B. D. 788; 52 L. J. Q. B. 689; 49 L. T. (N.S.) 489; 47 J. P. 789. The court followed *Waterhouse* v. *Keen*, 4 B. & C. 200; and *Selmes* v. *Judge*, *supra*. Note to Sect. 264.

Notice of action is not necessary in a case where the proceedings are taken for an injunction to restrain the committing of a nuisance. *Attorney-General* v. *Hackney Local Board*, L. R. 20 Eq. 626; 44 L. J. Ch. 545; 33 L. T. (N.S.) 244. This was followed by the court of appeal in *Flower* v. *Low Leyton Local Board*, 5 Ch. D. 347; 46 L. J. Ch. 621; 36 L. T. (N.S.) 760; 25 W. R. 545; 41 J. P. 548. There it was held that notice was not required where the object of the action was to restrain the commission of a nuisance, and that notwithstanding that the plaintiff claimed compensation for past damage. Notice is also unnecessary in an action for the recovery of land. *Foat* v. *Margate* (*Mayor of*), 11 Q. B. D. 299; 47 J. P. 535; S. C. *Holder* v. *Margate* (*Mayor of*), 52 L. J. Q. B. 711. So, where an action is brought by a contractor against a local board for a breach of contract, notice of action is not necessary. *Davies* v. *Swansea* (*Corporation of*), 8 Ex. 808; 22 L. J. Ex. 297. And according to *Delaney* v. *Metropolitan Board of Works*, *infra*, no notice is required in cases where compensation is claimed in respect of the exercise of powers granted by the Act.

A notice of action under 11 & 12 Vict. c. 63, s. 139, stated that the plaintiff intended to enter a plaint against the defendants, a local board, for the injury and damage caused to him by matters or things done or omitted by them and their labourers or servants, &c., to wit, that they did by themselves, their labourers and servants, "negligently, carelessly, and improperly leave a certain portion of the highway in an insufficient and improper state of repair, whereby, &c." It was held that this was a sufficient intimation to the defendants that they were to be charged with an act of misfeasance, and not merely with a neglect of duty to repair the road. *Smith* v. *West Derby Local Board*, *ante*, p. 140. There does not appear to have been any other decision with reference to the form or sufficiency of the notice under this section. As to these subjects the cases cited in *Roscoe's Nisi Prius Evidence*, at p. 1135, may be referred to. It is to be observed that a letter of the plaintiff's attorney claiming compensation for an injury, and stating that he is instructed to commence proceedings if no satisfactory arrangement is come to, is not a sufficient notice. *Mason* v. *Birkenhead Improvement Commissioners*, 6 H. & N. 72; 29 L. J. Ex. 407; 2 L. T. (N.S.) 632; 24 J. P. 791.

In reckoning the month, the day of giving the notice and the day of issuing the writ are both to be excluded. See *Young* v. *Higgon*, 6 M. & W. 49; and as the month is a calendar month, the rule for reckoning is as follows: "The day on which the notice was given being excluded, the calendar month is complete when, starting from a given day in the first month, you come to the corresponding day in the second month, whatever be the length of either." Per COCKBURN, C. J., in *Freeman* v. *Read*, 4 B. & S. 174; 11 W. R. 802; 8 L. T. (N.S.) 458; 32 L. J. M. C. 226.

(*b*) As to this provision and its effect when an action is brought against the local board as surveyors of highways, see the note to section 144, pp. 141, 142, and the cases therein cited.

In the *Midland Railway Company* v. *Withington Local Board*, *supra*, it appeared that the money was paid on the 30th October, 1880, so that the six months would expire on the 30th April, 1881. On the 13th April the plaintiffs' secretary wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the board were defeated they would expect a return

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of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882, after a month's notice had been given. It was held that the facts did not disclose a waiver by the defendants of this benefit of the section.

As to the computation of the six months, see *Freeman* v. *Read*, *supra*. Where the cause of action is the doing of the act itself, the limitation of time runs from the act; where it is the resulting damage, it runs from the time when the damage results, and where the injurious act is continuing and causes continuous damage, the right of action also continues. See *Whitehouse* v. *Fellowes*, 10 C. B. (N.S.) 765; 30 L. J. C. P. 305; *Bonomi* v. *Backhouse*, E. B. & E. 622; 28 L. J. Q. B. 378; 34 L. J. Q. B. 181. Where, by an Improvement Act, actions for any injury done by the commissioners under the Act were to be brought within six months *after the* thing done, and the defendants, proceeding under the Act to dig a sewer, cracked the walls of the plaintiff's house, it was held that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for as long a time as the crack continued. *Lloyd* v. *Wigney*, 6 Bing. 489.

In an action for compensation awarded in respect of damage occasioned by the exercise of the powers of the Act, it was held to be no defence that the action was commenced more than six months after the damage was sustained, as this section does not apply to such a claim, and still less to an action on an award made upon such claim. *Delaney* v. *Metropolitan Board of Works*, L. R. 3 C. P. 111; 37 L. J. C. P. 59; 17 L. T. (N.S.) 262; 16 W. R. 137; 31 J. P. 788.

(*c*) It is to be observed that the rules of the Supreme Court, which abolish local venues, make an exception in cases specially provided by statute (R. S. C. Order 36, rule 1). This exception did not exist under the rules as originally made under the Judicature Acts.

It was held that the corresponding section of 11 & 12 Vict. c. 63, did not deprive the court of their common law power to change the venue, when, in their judgment, the ends of justice required that they should do so. *Itchin Bridge Company* v. *Southampton Local Board*, 8 E. & B. 801; 27 L. J. Q. B. 128; 3 Jur. (N.S.) 1261.

Protection of local authority and their officers from personal liability.

265. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by any such authority, member, officer, or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act (*a*).

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the

accounts of such authority, and which such member authorized or joined in authorizing (*b*). Sect. 265.

(*a*) "The effect of clauses of this sort is not to leave a complaining party remediless, but to oblige him to bring his action against the public board or against the commissioners as a body . . . And any damages that may be recovered will be payable out of the funds at their disposal under the provisions for payment for damages and costs." *Addison on Torts*, 5th edition, p. 669. In similar clauses in other Acts, it is provided that the action shall be brought against the clerk. In such a case it has been held that the clerk is not liable personally. *Wormwell* v. *Hailstone*, 6 Bing. 668; and see *Hall* v. *Smith*, 2 Bing. 156; *Cane* v. *Chapman*, 5 A. & E. 647. Under the present Act the authority must be sued in their corporate name. (See section 7, *ante*, p. 19). The effect of this section is therefore to exempt from personal liability every one who has *bonâ fide* contracted with the local board to do some act under their direction, though he may thereby cause damage to another person which the Act itself does not justify or excuse. Thus where the defendants were contractors acting under the direction of the Metropolitan Commissioners of Sewers, and while so acting injured the plaintiff's premises, it was held that they were not liable. *Ward* v. *Lee*, 7 E. & B. 426; 26 L. J. Q. B. 142; 21 Jur. 557; 5 W. R. 403; 21 J. P. 179. In *Le Feuvre* v. *Miller*, 8 E. & B. 321; 26 L. J. M. C. 175; 21 J. P. 436, a question was raised and argued whether a bailiff who executed a warrant of distress to enforce payment of a rate alleged to be illegal was within this section. The question was not decided, but the court seemed to be of opinion that the case was within the principle of *Ward* v. *Lee*. And see *Southampton and Itchin Floating Bridge Company* v. *Southampton Local Board*, *ante*, p. 308. But the effect of the section is not to relieve a contractor from liability for the negligence of himself or his servants. "When there is no negligence, a party doing an act in obedience to the board of health is not liable, in that case he is very properly absolved, and the superior alone is liable, but if he is guilty of negligence in doing the act, and damage ensues, he is personally liable." Per Lord CAMPBELL, C. J., in *Arthy* v. *Coleman*, 6 W. R. 34; 21 J. P. 771. And see *Jones* v. *Bird*, 5 B. & Ald. 837; *Clothier* v. *Webster*, 12 C. B. (N.S.) 790; 31 L. J. C. P. 316. But a person who contracts for works under a local board is not liable for an injury which arises out of these works long after they are completed; for example, when after a sewer has been laid in a road by the contractor, there is a subsequent subsidence, it being the duty of the board to look after such occurrences. *Hyams* v. *Webster*, L. R. 2 Q. B. 264; 36 L. J. Q. B. 166; 16 L. T. (N.S.) 118; 15 W. R. 619; 31 J. P. 439. And see *Smith* v. *West Derby Local Board*, *ante*, p. 140. The cases in which a contractor has been held liable have been to some extent discussed in the note to the last section. A surveyor who executed an illegal order of a highway board was held to be personally liable, but not the clerk, who only wrote out the order. *Mill* v. *Hawker*, L. R. 10 Ex. 92; 44 L. J. Ex. 49; 33 L. T. (N.S.) 177; 23 W. R. 348; 39 J. P. 181. This case was distinguished in *Monks* v. *Dillon*, 10 L. R. Ir. 349. There works were executed by the contractor of a drainage board, pursuant to contract with them and by their authority, under the superintendence of the engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, and was frequently present on the ground and saw the works in progress, but did not further interfere. Some of the works were admittedly acts of trespass to the lands of the plaintiff, as the board had not obtained an assessment of compensation or paid such compensation before entry. It was held that the engineer was not liable for the trespass so committed.

The effect of the rule as above stated, is to render the local board liable to be sued in respect of damages arising out of their negligence in omitting to cause

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proper precautions to be taken in the exercise of works which they order to be done. This was stated in *Ward* v. *Lee* (*supra*), and held in *Southampton and Itchin Bridge Company* v. *Southampton Local Board*, *ante*, p. 308. In the latter case the local board were held to be liable to an action for so negligently and improperly constructing a sewer, as to cause a nuisance by its discharge and an injury to the plaintiffs. Again where a local board had ordered a new sewer to be constructed in their district, under a contract and plans which did not provide for a penstock or flap required to prevent the plaintiff's premises from being flooded by the influx of a river into them through the sewer, and in consequence of such omission they were flooded and greatly damaged, it was held that the local board were liable. *Ruck* v. *Williams*, 3 H. & N. 308; 27 L. J. Ex. 357; 22 J. P. 420. Where a corporation provided an improper machine in a washhouse, they were held liable for a damage caused thereby. *Cowley* v. *Sunderland* (*Mayor of*), 6 H. & N. 565; 30 L. J. Ex. 127, 177; 9 W. R. 668; 25 J. P. 434.

It has already been observed that when a contractor is employed by a local board, this section does not free him from the consequences of *his own negligence* or that of his servants. Where negligence on the part of such contractor is proved, and the local board have not in any way by interference or the like contributed towards the wrongful act of the contractor or his servants, the board are not liable. See *Humphreys* v. *Mears*, 1 M. & Ry. 30; *Duncan* v. *Findlater*, 6 Cl. & Fen. 894; *Steel* v. *South Eastern Railway Company*, 16 C. B. 550; *Butler* v. *Hunter*, 7 H. & N. 826; *Bayley* v. *Wolverhampton Waterworks Company*, 6 H. & N. 241; *Foreman* v. *Canterbury* (*Mayor of*), *ante*, p. 139; *Smith* v. *South Western Railway Company*, L. R. 6 C. P. 14; *Hill* v. *New River Railway Company*, 9 B. & S. 303; *Daniel* v. *Metropolitan Railway Company*, L. R. 5 H. L. 45. But if the damage arises out of the works themselves, or if the local board are really the parties executing the works, the board are liable. See *Scott* v. *Manchester* (*Corporation of*), 1 H. & N. 59; *Hole* v. *Sittingbourne Railway Company*, 6 H. & N. 488; 30 L. J. Ex. 81; *Blake* v. *Thirst*, 2 H. & C. 20; 32 L. J. Ex. 188; *Pitts* v. *Kingsbridge Highway Board*, 25 L. T. (N.S.) 195; 19 W. R. 884. Where a duty is imposed upon a public body they are not excused from omitting to perform it, or from the imperfect or improper performance of the duty, by reason of their having engaged a contractor to do it. See *Pickhard* v. *Smith*, 10 C. B. (N.S.) 470; *Gray* v. *Pullen*, 5 B. & S. 970; 34 L. J. Q. B. 265. And where work is ordered to be done which is lawful in itself, but from which in the natural course of things injurious consequences are likely to arise, the employer must see that means are adopted to prevent such consequences. He cannot relieve himself of his liability by employing some one else to do what is necessary to prevent the act he had ordered to be done from becoming wrongful. *Bower* v. *Peate*, 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. (N.S.) 321; *Angus* v. *Dalton*, 6 App. Cas. 740; 50 L. J. Q. B. 689; 44 L. T. (N.S.) 484; 30 W. R. 191. And when persons are incorporated by statute for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation to take, from time to time, measures to prevent the occurrence of such inconvenience and injury. *Geddis* v. *Bann Reservoir* (*Proprietors of*), 3 App. Cas. 430. Of course a public board is not answerable for damage which results from the negligence of the party injured, or of some other person independent of the public body, or acting contrary to or beyond their directions (see *Holden* v. *Liverpool New Gas Company*, 3 C. B. 1); nor for the act of their officer or agent done without their knowledge and beyond the scope of their employment. *Bolingbroke* v. *Swindon Local Board*, L. R. 9 C. P. 575; 43 L. J. C. P. 287; 30 L. T. (N.S.) 723; 23 W. R. 47. In that case a local board, being in occupation of a sewage farm, had given to B. plenary powers for the management of such farm in the most beneficial manner. A ditch ran between the farm

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and the land of the plaintiff. With a view to rendering such ditch more capable of carrying off the drainage from the farm, B. wrongfully went upon the plaintiff's land and pared away his side of the ditch, and cut down so much of the brushwood and underwood on the plaintiff's side as impeded the flow of drainage along the ditch. Held, that the acts so done by B. were not within the scope of his employment, and consequently that the local board were not liable for them at the suit of the plaintiff, there being no implied authority from the board to do them.

Neither are a local board responsible for accidents arising out of extraordinary causes, where all reasonable care has been taken to prevent such as would arise from ordinary causes. See *Blyth* v. *Birmingham Waterworks Company*, and the other cases cited in the notes to section 66, *ante*, p. 75. As to the precautions which public bodies are required by law to take to prevent injury from the exercise of their powers, reference may be made to *Great Western Railway of Canada* v. *Braid*, 1 Moo. P. C. (N.S.) 101; *Biscoe* v. *Great Eastern Railway Company*, L. R. 16 Eq. 636; 21 W. R. 902.

The liabilities of local boards as surveyors of highways, and in respect of accidents on highways caused by their negligence, have already been considered. See section 144, *ante*, p. 137.

When a public board let the navigation of a river and omitted to give notice to the lessee to repair a lock, and in consequence of such want of repair a barge owner sustained loss, the board were held not to be liable, as the loss did not necessarily result from the omission. *Walker* v. *Goe*, 4 H. & N. 350; 28 L. J. Ex. 184. And where a corporation were empowered to improve the navigation of a river, and for that purpose erected staunches, which being accompanied with the accumulation of filth and the growth of weeds, caused the river to overflow and damage the lands adjoining, it was held that the riparian owner had no ground of action against the corporation, though he might have a ground of compensation under the section corresponding to section 308, *post*. *Cracknell* v. *Thetford* (*Mayor of*), L. R. 4 C. P. 629.

The principle on which a private person or company is liable for damages occasioned by the neglect of servants, applies to a corporation which has been entrusted by statute to perform certain works and to receive tolls for the use of those works, although the tolls, unlike the tolls received by the private person or company, are not applicable to the use of the individual corporators or to that of the corporation, but are devoted to the maintenance of the works. *Mersey Docks and Harbour Trustees* v. *Gibbs*, L. R. 1 H. L. 93; 35 L. J. Ex. 225; 14 W. R. 872; 30 J. P. 467. Therefore conservators of a river having in part constructed and in part acquired a towing path, and having taken tolls for the use of it, were held liable for damages caused by its defective condition. *Winch* v. *Thames* (*Conservators of*), L. R. 9 C. P. 378; 43 L. J. C. P. 167; 31 L. T. (N.S.) 128; 22 W. R. 879.

When public commissioners are guilty of negligence in the management of their works, and certain persons, to avert or remove damage which would result from such negligence to themselves, do an act which would damage a third person, he has a right of action against the commissioners whose negligence was the primary cause of the damage. *Collins* v. *Middle Level Commissioners*, L. R. 4 C. P. 279; 38 L. J. C. P. 236. See also *Harrison* v. *Great Northern Railway Company*, 3 H. & C. 231; 33 L. J. Ex. 266; *Burrows* v. *March Gas Company*, L. R. 7 Ex. 96; 41 L. J. Ex. 46.

It is right here to observe that a local authority will be liable for breaches of contract and for civil injuries to the same extent as any other corporate body. Hence in *Higgs* v. *Godwin*, 27 L. J. Q. B. 421; 31 L. T. (O.S.) 196, an action was brought against a local board for infringing a patent.

As regards other proceedings against local authorities, it may be stated that it was held that an action on the case was not maintainable against a local board for not paying the salary of an organist, which salary was claimed as payable out of certain moneys of which the local board had become trustees. It appeared that the board had funds applicable to the payment of the salary,

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but it was held that in the absence of a specific appropriation of a part of the fund to the plaintiff no action at law would lie, the proper remedy being in equity, or possibly by *mandamus*. *Edwards* v. *Lowndes*, 1 E. & B. 81; 22 L. J. Q. B. 104; 17 Jur. 412.

In order to maintain an action against a local board for payment of claims upon them payable out of particular funds, it must be shown that they are in possession of those funds, and that they are available for payment of the claim. See *Pardoe* v. *Price*, 16 M. & W. 451; 16 L. J. Ex. 192; *Lloyd* v. *Burrup*, L. R. 4 Ex. 63; 38 L. J. Ex. 25; 19 L. T. (N.S.) 696. But in a case where a local board in default of owners to execute works, contracted with a third person to execute them, and the contract contained a provision to pay him when the money was collected from the owners, it was held that he was entitled to recover for the work done by him, though the money could not be recovered from the owners by reason of a defect in the notices. *Worthington* v. *Sudlow*, *ante*, p. 161.

Where a vestry took possession of highways in respect of which a rent was payable to the representatives of a former owner of the land, they were held liable to an action for non-payment of the rent. *Sansom* v. *Shoreditch* (*Vestry of*), 38 L. J. C. P. 286.

As to the liability of a local board to action for salaries due to officers, see the notes to section 189, *ante*, p. 220.

Where a municipal corporation were sued for a debt owing by them in that character, it was held that they could set off a debt due to them as a local board. *Pedder* v. *Preston* (*Corporation of*), 12 C. B. (N.S.) 535; 6 L. T. (N.S.) 540.

It becomes necessary to consider how the judgment recovered against a local authority can be enforced. Where a judgment was recovered against the clerk of certain commissioners under an Improvement Act, and the sheriff had on a *fi. fa.* seized certain goods of the commissioners vested in them for public purposes, the Court of Exchequer refused to set aside the writ of *fi. fa.* and subsequent proceedings, but left the parties to bring an action of trespass, or to take such other remedy as they might think proper. *Saunders* v. *Slack*, 11 L. T. (N.S.) 484. This case was approved of in *Worrall Waterworks Company* v. *Lloyd*, L. R. 1 C. P. 719. There land which had been conveyed to a local board for the purposes of the Public Health Acts, was used as a reservoir for the supply of water to the district of the local board. A judgment having been obtained against the local board in the name of their clerk, it was held that the land was liable to be taken under a writ of *elegit*. WILLES, J., said: "We have been anticipated by the Exchequer in *Saunders* v. *Slack*, and by the decision of the House of Lords in the case of *Mersey Dock Trustees* v. *Gibbs* (*supra*). It has been said that the House of Lords only referred to the right of the plaintiff to judgment, and not to the execution; but the principle upon which their decision rests is equally applicable to the right to execution as to judgment, and it was so understood in *Coe* v. *Wise*, L. R. 1 Q. B. 711." If there be no property of the local board available to satisfy the debt, the proper remedy is by *mandamus* to the authority to pay or satisfy the judgment out of moneys in their hands or rates which they can make. The decisions on *mandamus* in such cases have already been noticed: see the notes to section 210, *ante*, p. 237. See also *Webb* v. *Herne Bay Commissioners*, *ante*, p. 238, where it was held that a *mandamus* might be prayed for to compel the board to pay the amount due out of moneys in their hands without making a rate for the purpose; and *Bush* v. *Beavan*, *ante*, p. 221, where a *mandamus* was refused to enforce payment of a debt against commissioners, the debt not being a charge on the local rate, but due from the commissioners personally. The *mandamus* may be claimed in the same action as that to establish the debt. *Ward* v. *Lowndes*, 1 E. & E. 940; 29 L. J. Q. B. 40; 6 Jur. (N.S.) 247; 1 L. T. (N.S.) 268.

When the local authority enter into any contract, they will be liable to the contractor in an action on the contract if it is broken by them, and he will not

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be compelled to proceed in equity, or by *mandamus*, in the first place, or in an action in the case for the recovery of his damages. *Nowell* v. *Worcester* (*Mayor of*), 9 Ex. 457; 23 L. J. Ex. 139; 2 C. L. R. 981; 18 Jur. 64; *Payne* v. *Brecon* (*Mayor of*), 3 H. & N. 572; 27 L. J. Ex. 495; 22 J. P. 690. The judgment, if given against a municipal corporation, will not, however, operate as a charge upon the real estate belonging to it, unless the Lords of the Treasury order this to be done. *Arnold* v. *Gravesend* (*Mayor of*), 25 L. J. Ch. 777; 2 K. & J. 574; 2 Jur. (N.S.) 703, nor, as it seems, upon other property of the corporation, according to *Pallister* v. *Gravesend* (*Mayor of*), 9 C. B. 774; *Arnold* v. *Ridge*, 13 C. B. 745; 1 C. L. R. 309; 17 Jur. 896; 22 L. J. C. P. 235. But see *Worral Waterworks Company* v. *Lloyd*, *supra*. And in any event the judgment may be enforced by *mandamus*.

Section 249, *ante*, p. 288, should be mentioned here with reference to the taxation of the bill of the solicitor employed by the local authority.

Where a local authority enter into a contract *ultra vires*, and cannot pay the contractor out of their funds, the individual members of the board are not personally liable on that contract. *Bailey* v. *Cuckson*, 32 L. T. (O.S.) 124; 7 W. R. 16. Whether they can be made liable as on a personal guarantee may be a question; but according to *Mount Stephen* v. *Lakeman*, L. R. 5 Q. B. 613, no action would be maintainable unless there were a written document in conformity with the Statute of Frauds. This decision was reversed in errror upon a different view of the facts taken by the Court of Error: L. R. 7 Q. B. 196; 41 L. J. Q. B. 67; and the House of Lords confirmed the judgment of the Court of Error, holding that there was a personal pledge of credit: L. R. 7 H. L. 17; 43 L. J. Q. B. 188; 30 L. T. (N.S.) 437; 22 W. R. 617. As to the liability of individual members of a board for an illegal act committed by their officer, but by their direction, see *Mill* v. *Hawker*, *ante*, p. 309. In a recent case a metropolitan vestry had passed resolutions authorizing certain illegal expenditure out of the rates. An action was brought by the Attorney-General at the relation of a ratepayer, and by the ratepayer as plaintiff against the vestry and six of the vestrymen who had voted for the resolution, to restrain the proposed application out of the rates. It was not alleged that any of the rates had been applied as proposed, it was merely alleged that the vestry intended so to apply the rates. It was held that the individual defendants were not properly made parties for the purpose of obtaining costs from them, and that the action must be dismissed as against them. *Attorney-General* v. *Bermondsey* (*Vestry of*), 23 Ch. D. 60; 52 L. J. Ch. 567; 48 L. T. (N.S.) 445; 31 W. R. 463; 47 J. P. 453. It would seem from this case that if the money had in fact been paid for the illegal purpose, the individual members might have been compelled to recoup the money and pay the costs, according to *Attorney-General* v. *Compton*, 1 Y. & C. 417.

It will be remembered that under 29 & 30 Vict. c. 90, s. 46, re-enacted in section 7, *ante*, p. 19, every local board was incorporated and rendered competent to sue and be sued in the corporate name. But under 11 & 12 Vict. c. 63, s. 138, local boards in non-corporate districts were to sue and be sued in the name of their clerk. When proceedings were taken in the name of the clerk after the passing of the Act which incorporated the board, the court allowed them to be amended by substituting the local board for the clerk. See *Deeks* v. *Bailey*, 21 L. T. (N.S.) 581; *Bolingbroke* (*Lord*) v. *Townsend*, L. R. 8 C. P. 645; *Mills* v. *Scott*, L. R. 8 Q. B. 496; *Prior* v. *West Ham Local Board*, 15 L. T. (N.S.) 250.

When a local board were defendants in a suit in Chancery, and no answer was put in to the bill, all the members of the board having resigned, the Vice-Chancellor allowed the plaintiff to take a decree in the terms of the petition. *Hardinge* v. *Southborough Local Board*, 32 L. T. (N.S.) 250.

As the local authority are liable to proceedings in the courts of law, so they are entitled to the remedies of other suitors. Thus, where a local board had contracted with a sewage company for the latter to execute works for the removal of sewage, and the company so improperly carried on the works that

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they drove back large quantities of the sewage into the district, it was held that the local board might maintain a bill for an injunction, and that it was not required that the Attorney-General should file an information. *Nuneaton Local Board* v. *General Sewage Company*, L. R. 20 Eq. 127; 44 L. J. Ch. 561.

See the Rules of the Supreme Court, Order XXXI., rule 5. As to the interrogatories in actions by or against local authorities.

(*b*) See section 247, sub-section (7), *ante*, p. 283.

Notices.

Notices, &c., may be printed or written.

266. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

It is presumed that this should be read *reddendo singula singulis*, so that the notices referred to must be such as each officer by virtue of his office can properly sign.

37 & 38 Vict. c. 89, s. 40, rendered the notice sufficient if it purported to be signed by the officer; but as these words are omitted, the signature must be proved in any proceedings where the notice is of importance, unless it be admitted by the opposite party.

The provision in the text was of importance under 11 & 12 Vict. c. 63, in respect of non-corporate districts, where a certain number of members were required to sign special documents. But as there are no such districts, but all are incorporated, and there is no requisition as to signature by members, the section seems to be one of extreme caution.

With regard to the use of block signatures, see *Osgood* v. *Nelson*, L. R. 5 H. L. 648; 41 L. J. Q. B. 329; *Blades* v. *Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133; 30 L. T. (N.S.) 378; 22 W. R. 643.

Service of notices.

267. Notices orders and any other documents required or authorized to be served under this Act may be served by delivering the same to or at the *residence* (*a*) of the person to whom they are respectively addressed, or where addressed to the *owner* (*b*) or occupier of *premises* (*b*) by delivering the same or a true copy thereof to some person on the *premises*, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the *premises* (*c*); they may also be served *by post* (*d*) by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of

the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description (*e*). Sect. 267.

(*a*) This word appears to signify the place of abode, as in 11 & 12 Vict. c. 63, s. 150, but it is a word not free from ambiguity in its application. In *Blackwell* v. *England*, 27 L. J. Q. B. 124, the court said that the meaning of the word residence had to be determined with reference to the purpose of the statute in which it was used. Therefore, although for the purposes of the Poor Law Acts it meant the place where a person lived with his family, yet for the purpose of a Bill of Sale Act, which required the residence of an attesting witness to be stated, a business address was a sufficient statement of the residence. And see *Mason* v. *Bibby*, *infra*. And a person may have more than one residence; thus he may have houses in different places, each of which may be called his residence. *Walcot* v. *Boyfield*, 1 Kay, 534; 18 Jur. 570.

(*b*) See the definition of *owner* in section 4, *ante*, p. 6, and *premises* in the same section, *ante*, p. 6.

(*c*) 11 & 12 Vict. c. 63, s. 150, provided that in all cases in which any notice was required to be given to the owner or occupier of any premises, it should be sufficient to address the notice to them by the description of the "owner" or "occupier" of the premises, and that the notice should be served either personally or by delivering the same to some inmate of the owner's or occupier's place of abode. Held, that service of a notice by delivering it to the clerk of an owner at his place of business was sufficient, section 150 being merely in aid of service of notices; and per MARTIN, B., that the section was good under section 150, a place of business being a place of abode, and a clerk an inmate within section 150. *Mason* v. *Bibby*, 2 H. & C. 881; 33 L. J. M. C. 105; 9 L. T. (N.S.) 692; 12 W. R. 382; 10 Jur. (N.S.) 519; 28 J. P. 121.

(*d*) 11 & 12 Vict. c. 63, s. 150, allowed service by post only when the owner's place of abode was not within the limits of the district. There is no such distinction in the text.

(*e*) Notwithstanding this permission, it will be found in general to be most expedient to ascertain, if possible, the names of the owners and occupiers. Much embarrassment often arises in dealing with unknown persons.

Appeal.

Appeal in certain cases to Local Government Board.

268. Where any person deems himself aggrieved by the *decision* of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within *twenty-one days* (*a*) after notice of such *decision* (*b*), address a memorial to the Local Government Board, stating the grounds of his complaint (*c*), and shall deliver a copy thereof to the local authority (*d*); the Local Government Board may make such order in the matter as to the said board may seem equitable, and the order so made shall be binding and conclusive on all parties (*e*).

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Govern-

Sect. 268. ment Board may, if it think fit, by its order (*f*), direct the local authority to pay to the person so proceeded against such sum as the said board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

(*a*) The corresponding section of the Public Health Act, 1848, 11 & 12 Vict. c. 43, s. 12, allowed only seven days.

(*b*) Notice of apportionment of expenses under section 150 having been served upon an owner, and demand of payment having been made after three months had expired, the owner, deeming himself aggrieved by the *decision* of the local authority, addressed a memorial, by way of appeal, to the Local Government Board stating the grounds of his complaint. On a rule for a prohibition to the Local Government Board, it was held by the court of appeal that an appeal lay to the Local Government Board, and that no prohibition ought to be granted. The court held that the demand of payment was the first decision from which an appeal would lie under this section. With regard to the power of the board on such appeal, BAGGALLAY, L. J., said "that while they might properly refuse to travel beyond the grounds of complaint alleged in the memorial, yet that they had jurisdiction to inquire into the whole matter, and to inquire whether the aggregate amount of the expenses was unreasonable or unnecessary, as well as whether the proportion assessed upon the appellant was right." And BREET, L. J., said: "It seems to me obvious, from the construction of the Act, that the Local Government Board have power to inquire into every circumstance, however remote, which could reasonably determine the question whether it was equitable or not that a particular sum should be paid." The same learned judge also expressed an opinion that the decision of the Local Government Board was judicial, and that it was their duty to hear the parties presenting the memorial, though not necessarily by hearing oral evidence. It was their duty, however, to allow the appellant to know what was the answer of the local authority to his memorial, so as to let him reply to it. *Reg.* (or *Penarth*) v. *Local Government Board*, 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L.T. (N.S.) 173; 31 W. R. 72; 47 J. P. 228.

Upon the hearing of a complaint to recover expenses under section 150 (*ante*, p. 152), the defendant objected that the places referred to in the notice showed that part of the work had been executed upon land belonging to private owners. The magistrate found as a fact that the land did not belong to private owners, but formed part of the street when the notice was given, and made an order for payment of the amount apportioned. Upon application for a writ of *certiorari* upon affidavits which satisfied the court that the magistrate's finding was contrary to the fact, it was held, assuming that the magistrate had jurisdiction to inquire whether the case was within the statute, that the matter was at least partly within the statute, so as to give the magistrate jurisdiction, and that the remedy was not by *certiorari*. (See section 262, *ante*, p. 302.) It was further held that the proper remedy was by appeal under this section against the decision of the local authority. *Ex parte Wake*, *Reg.* v. *Sheffield* (*Recorder of*), 11 Q. B. D. 291; 52 L. J. M. C. 78; 31 W. R. 704; 47 J. P. 504; affirmed in C. A., 53 L. J. M. C. 1; 32 W. R. 82.

Note, however, that this is not necessarily the only method of appeal against a decision of a local authority. In the case just mentioned, SMITH, J., pointed out that the appellant might have obtained a case under 20 & 21 Vict. c. 43, or might have appealed to quarter sessions under the next section (11 Q. B. D. 299). The remedy given by this section may, however, be more beneficial in cases where the ground of complaint is insufficient to obtain a legal remedy, or where such legal remedy, if obtained, would not satisfy the equity of the matter.

Section 229, *ante*, p. 269, provides for another appeal to the Local Government Board against an order of a rural authority.

(*c*) The memorial should be written on foolscap folio paper, and should be

addressed to the President of the Local Government Board under cover to the secretary of that board. It should be signed by the party aggrieved, and should state his case clearly, but as concisely as possible. **Note to Sect. 268.**

(*d*) This provision is new. Under the former Act the local board might know nothing of the appeal to the Local Government Board until long after it had been made. Now the authority will have simultaneous notice.

(*e*) As to the powers and duties of the board on such appeal, see *Reg.* v. *Local Government Board, supra.* See also *Cook* v. *Ipswich Local Board, ante* p. 166.

(*f*) It is a question how this order can be enforced. It is not an order to which section 294, *post*, applies. But according to *Reg.* v. *Walker*, L. R. 10 Q. B. 355; 44 L. J. M. C. 169; 33 L. T. (N.S.) 167; 40 J. P. 230, the local authority might, perhaps, be indicted for a misdemeanor if they disobeyed it. And possibly obedience might be compelled by *mandamus.*

Section 295, *post*, provides for the publication of the order if the board should require it to be published.

269. Where any person deems himself *aggrieved* (*a*) by any rate made under the provisions of this Act (*b*) or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction (*c*), such person may appeal therefrom, subject to the conditions and regulations following (*d*): Appeal to quarter sessions.

(1.) The appeal shall be made to the next court of quarter sessions (*e*) *for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made:*

(2.) *The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose acts he deems himself aggrieved, of his intention to appeal, and of the ground thereof:*

(3.) *The appellant shall, immediately after such notice, enter into recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justices may allow:*

(4.) *Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody:*

(5.) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any

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rate or assessment (*f*), and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor (*g*); and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals (*h*): Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (*i*):

(6.) In the case of other appeals the court of appeal may, if it thinks fit, adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court think just (*k*):

(7.) The decision of the court of appeal shall be binding on all parties (*l*): Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a *superior court* (*m*).

(*a*) A town improvement Act gave a right of appeal against any order of the commissioners to any person aggrieved by it. At a meeting of ratepayers it was resolved that the commissioners be empowered, out of the town funds raised under the Act, to prosecute an application to Parliament for a local Act. The application failed. The commissioners made an order for payment of the expenses out of the town funds. The mover of the resolution empowering the commissioners to promote the bill appealed as a ratepayer against this order. Held, that he was precluded from appealing as aggrieved by an Act which he had sanctioned. *Harrup* v. *Bayley*, 6 E. & B. 218; 25 L. J. M. C. 107; 20 J. P. 627.

(*b*) A question was raised in *Ricardo* v. *Maidenhead Local Board*, 2 H. & N. 257; 27 L. J. M. C. 73; 21 J. P. 359, whether an appeal lay against an order of justices ordering payment of a rate which has not itself been appealed against. The court did not decide the question. But the case was decided under 11 & 12 Vict. c. 43, s. 103 of which enabled justices to enforce a rate by warrant without order. Under the present Act an order is necessary (see section 256, *ante*, p. 294), and there seems to be no reason why an appeal should not lie. It may still be doubted, however, whether on such appeal objec-

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tion could be taken which goes to the validity of the rate as distinguished from the jurisdiction of justices to enforce it. It seems that an appeal does not lie, in the case of the poor rate, against a warrant to enforce payment. See *Reg.* v. *Kent* (*Justices of*), *Ex parte Roots*, 16 L. T. (N.S.) 673. The objections which can be taken before justices when proceedings are taken before them to enforce payment of a rate are discussed at 47 J. P. pp.

The usual objections which are raised before justices are that the defendant was not in occupation of the rated premises, or that the premises are beyond the district.

(*c*) For the definition of the phrase *court of summary jurisdiction*, see section 4, *ante*, p. 15.

It is to be noticed that the words "order, conviction, judgment or determination of or by any matter or thing done" do not enable a prosecutor in a criminal matter to appeal if the information laid by him is heard and dismissed. It is a general rule that, except where there is express statutory provision to the contrary, appeal does not lie against a dismissal or acquittal in criminal proceedings. In a recent case, *Payne* v. *The Uxbridge Sanitary Authority*, 45 J. P. 327, information had been laid against the defendants for sending sewage into a tributary of the river Thames contrary to the provisions of the Thames Conservancy Act. That Act gave an appeal "if any person shall feel aggrieved by any adjudication or determination of any justice with respect to any penalty or forfeiture under the provisions of this Act." The Middlesex Quarter Sessions held that this enabled them to hear an appeal from the decision of the justices who had dismissed the information. But the Queen's Bench Division granted a prohibition holding that the Act gave no power of appeal when the information was dismissed. *Reg.* v. *Middlesex* (*Justices of*), 45 J. P. 420.

(*d*) The Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 32, provides as follows:—"Where a person is authorized by any past Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations contained *in this Act* with respect to an appeal to a court of general or quarter sessions: Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorizing the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act. Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held *not less than fifteen days* after the day on which the decision was given upon which the conviction or order appealed against was founded."

It will be observed that the section just quoted gave a power of appeal according to the conditions or regulations of the Summary Jurisdiction Act or of this Act as the appellant might think fit to elect.

The Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, repealed this section from the words "for the county" in sub-section (1) to the end of sub-section (4), and also sub-sections (6) and (7) so far as relates to an appeal against an order or conviction of a court of summary jurisdiction.

The same Act provides by section 6 that all appeals must now be brought subject to the conditions and regulations of the Summary Jurisdiction Act, 1879.

These conditions and regulations are contained in section 31, and are as follows:

"Where any person is authorized . . . to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter

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sessions, he may appeal to such court subject to the conditions and regulations following:

"(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or, if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded; and

"(2.) The appellant shall, within the prescribed time, or, if no time is prescribed, within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal; and

"(3.) The appellant shall, within the prescribed time, or, if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as that court deem sufficient; and

"(4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance, or giving such other security as aforesaid, release him from custody; and

"(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

"(6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order appealed against, a memorandum of the decision of the court of appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

"(7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the

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time when it would be delivered in the ordinary course of the post."

(*e*) Where an adjourned sessions intervenes, the time must be calculated with reference to the first day of the next quarter sessions, and not with reference to the first day of the adjourned sessions. *Reg.* v. *Lancashire JJ.*, 34 L. T. (N.S.) 124; 40 J. P. 438.

And see *Rawnsley* v. *Hutchinson*, L. R. 6 Q. B. 305; 40 L. J. M. C. 97; 23 L. T. (N.S.) 843; 19 W. R. 436; 35 J. P. 501.

The phrase "next session" means the next sessions at which an effectual trial can be had after the proper notices have been given. Therefore, where a rate was made on the 20th March and the notices for the next quarter sessions, held on the 6th April, must have been given on the 22nd March, it was held that the appeal might be brought at the July quarter sessions without being entered and respited at the April sessions. *Reg.* v. *Surrey* (*Justices of*), 6 Q. B. D. 100; 50 L. J. M. C. 10; 43 L. T. (N.S.) 500; 29 W. R. 260; 45 J. P. 93.

In a recent case all the preliminaries to an appeal to the next quarter sessions were duly observed, but at the sitting of the court the quarter sessions refused to allow the appeal to be entered on the ground that by a rule of the sessions an appeal must be entered, and grounds of appeal deposited with the clerk of the peace three clear days before the first day of the sessions; and the sessions made an order for £10 costs to the respondents under 12 & 13 Vict. c. 45, s. 6, as on an appeal which had not been entered or prosecuted. This order having been brought up and a rule to quash it obtained:—Held, that the rule of sessions amounted to imposing an additional condition to the appeal which the statute had not imposed, and was more than a mere rule of practice which it might be competent for the sessions to make; and that the order for costs must be quashed. *Reg.* v. *Pawlett*, L. R. 8 Q. B. 491; 42 L. J. M. C. 157; 29 L. T. (N.S.) 390; 37 J. P. 775.

The repeal already referred to effects a considerable change in the law with reference to appeals under this Act. Of these, the chief is that which relates to appeals against rates. The Public Health Act, 1875, originally provided that appeal should be brought to the next quarter sessions, holden not less than twenty-one days after the demand of the rate. (See upon this section the judgment of BLACKBURN, J., in *Reg.* v. *Barnet Rural Sanitary Authority*, 1 Q. B. D. 558; 45 L. J. M. C. 105; 35 L. T. (N.S.) 362; 40 J. P. 341.) Section 6 of the Summary Jurisdiction Act, 1884, makes no provision for an appeal against a rate, nor does section 31 of the Summary Jurisdiction Act, 1879. The text expressly gives an appeal against a rate, but as the appeal is to be brought to the next court of quarter sessions holden not less than fifteen days after the day upon which the conviction or order was founded, it is difficult to fix the date from which the fifteen days is to run. The language of section 31 of the Summary Jurisdiction Act, 1879, would probably apply to an order made under section 256 (*ante*, p. 294) for the payment of a rate, but this is not what is generally understood by an appeal against a rate such as that mentioned in the text.

It is to be noticed also that the new enactment requires that the notices of appeal should be in writing. This was formerly unnecessary.

Where the quarter sessions have refused to hear an appeal on the ground of the insufficiency of the notices, and a *mandamus* is applied for to compel them to hear, the court will, upon the argument against the rule, determine the question of the sufficiency or insufficiency of the notices. *Curtis, Ex parte*, 3 Q. B. D. 13; 47 L. J. M. C. 35; 26 W. R. 210; 42 J. P. 87.

(*f*) Therefore, it was held that the sessions might quash a rate which showed by the estimate prefixed to the rate that it was made for purposes which were illegal. *Reg.* v. *Worksop Local Board*, 21 J. P. 451.

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(*g*) 41 Geo. 3, c. 23, ss. 1–6, and 6 & 7 Will. 4, c. 96, s. 7, provide for the amending and quashing of poor rates, and 17 Geo. 2, c. 38; 41 Geo. 3, c. 23, s. 8; and 6 & 7 Will. 4, c. 96, s. 7, provide for the awarding and recovery of costs in appeals against such rates.

(*h*) That is, in one of the following modes:—(1) by indictment for disobedience of the order of sessions; (2) by order enforced as provided by 12 & 13 Vict. c. 45, s. 5, *i.e.*, by distress under 11 & 12 Vict. c. 43, s. 27 (but see *Reg.* v. *Huntley*, 23 L. J. M. C. 106); and (3) by removal of the order into the Queen's Bench Division to be thereafter enforced as a rule of court by the ordinary writ of execution (12 & 13 Vict. c. 45, s. 18).

(*i*) This provision is the same as that in 41 Geo. 3, c. 23, s. 1, respecting the poor rate. Under that section it was held that where a rate was reduced on appeal, and the person rated had during the appeal paid on the unreduced assessment, the overseers might, in subsequent rates, credit him for the excess paid without an order of sessions. *Reg.* v. *Parker*, 7 E. & B. 155; 26 L. J. Q. B. 313; 3 Jur. (N.S.) 771; 21 J. P. 549. And see also as to the construction of the section, *Reg.* v. *JJ. of Kingston*, 27 L. J. M. C. 199; 23 J. P. 4, 5.

(*k*) This sub-section and the next are repealed so far as relates to an appeal against an order or conviction of a court of summary jurisdiction: 47 & 48 Vict. c. 43. Section 5 of that Act substitutes the corresponding provisions of the Summary Jurisdiction Acts.

With reference to the provision as to costs, it must be observed that this enactment gives no power to award costs against convicting justices. *Reg.* v. *Goodall*, L. R. 9 Q. B. 557; 43 L. J. M. C. 119; 38 J. P. 616. An information was laid by M., who was the surveyor of a local board, but without reference to his official position, against H., for the violation of a bye-law of such local board; and upon the hearing H. was convicted and ordered to pay £7 10*s.* to the local board for costs. H. thereupon gave notice of appeal to the convicting justices and to M. Both the justices and M. handed over their notice to the attorney of the local board, and he conducted the defence on behalf of the board. The quarter sessions quashed the conviction with costs: and the clerk of the peace directing the costs to be paid by the respondents, the costs were taxed, and being unpaid, an application was made to justices for a warrant against the goods of M. for the amount. Held, first, that the order of quarter sessions was bad in ordering the costs to be paid by the respondents, who were the convicting justices, and M., and that it should have been made upon the local board, who were the parties appealed against; and, secondly, that as the order was valid, except as to that part which related to costs, it should be quashed as to that part only. *Reg.* v. *Davidson*, 24 L. T. (N.S.) 22.

As to the costs on reference of appeals to arbitration, see *Southampton Gas Light and Coke Company* v. *Southampton Union* (*Guardians of*), 2 Q. B. D. 371; 46 L. J. M. C. 238; 36 L. T. (N.S.) 548; 25 W. R. 671; 41 J. P. 645; *West London Extension Railway Company* v. *Fulham Union*, L. R. 5 Q. B. 361; 36 L. J. Q. B. 178; 22 L. T. (N.S.) 523; 36 J. P. 55; *Reg.* v. *Middlesex JJ.*, L. R. 6 Q. B. 220; 40 L. J. M. C. 109; 24 L. T. (N.S.) 131; 19 W. R. 744.

As to taxing costs out of sessions, see *Reg.* v. *Phillips*, 29 L. T. (N.S.) 100; 37 J. P. 824.

(*l*) The procedure at the hearing of the appeal is regulated by Baine's Act, 12 & 13 Vict. c. 45, to which reference should be made.

(*m*) A *certiorari* is not now necessary to bring up the case. See the Summary Jurisdiction Act, 1879, s. 40.

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Upon an application to enter and respite an appeal, the quarter sessions have no power to state a special case; and the court will take no notice of a case so stated. Where the sessions granted an application to enter and respite appeals against poor rates, subject to a case, the court heard the arguments, but after consideration, and although no objection was raised by either side, declined to express an opinion in a case reserved on such an order. *Reg.* v. *Sutton Coldfield* (*Overseers of*), L. R. 9 Q. B. 153; 29 L. T. (N.S.) 840; 22 W. R. 324; 38 J. P. 166; S. C. *Reg.* v. *London and North Western Railway Company*, 43 L. J. M. C. 57.

After notice of appeal, a case may be stated by consent, without going to quarter sessions, under 12 & 13 Vict. c. 45, s. 11. Where this is done the case should contain a statement of the agreement of the parties that judgment in conformity with the decision of the court may be entered at quarter sessions in the manner provided by the section, otherwise it will be struck out of the paper. *Peterborough* (*Corporation of*) v. *Thurlby* (*Overseers of*), 8 Q. B. D. 586.

A case contained the following paragraph: "If the court should be of opinion that the appeal ought to have been allowed, and the order quashed, judgment for the appellant is to be entered accordingly at the next quarter sessions." Before hearing counsel the court dismissed the appeal and affirmed the order, holding that the sessions ought not to state anything about afterwards entering the appeal at sessions as if the whole jurisdiction rested with them, and an opinion only was asked of the High Court. The statement of the case was, however, an end of the jurisdiction of the sessions, which had nothing further to do with the matter. No opinion was given on the merits. *Reg.* v. *Headington Union*, 47 J. P. 756.

A special case stated by quarter sessions contained the following clause:—"The court are in all respects to exercise the power of the sessions to confirm, amend, alter, vary, modify, or reverse their decision in such manner and to such extent as to such court shall seem expedient and proper; costs to follow the event." The court quashed the order, but the judgment was silent as to the costs. In an action to recover the costs incurred in the argument of the case, and also the costs of certain applications made to the quarter sessions from time to time until the judgment of the Queen's Bench Division in the plaintiff's favour was obtained: Held (1), that the words "costs to follow the event" referred and were intended to refer to the costs claimed by the plaintiff; (2) that these words, though contained in a special case, amounted to an agreement between the parties, and rendered the defendant liable to pay the costs; and (3) that the taxation of the costs was not a condition precedent to the plaintiff's right to bring an action to recover them. *Lear* v. *Botting*, 44 L. T. (N.S.) 58; 45 J. P. 240.

An appeal does not lie from the decision of the Queen's Bench Division on a case stated under this section, unless leave to appeal is given under 36 & 37 Vict. c. 66, s. 45. *Reg.* v. *Swindon Local Board*, 42 L. T. (N.S.) 614; 49 L. J. Q. B. 572; 28 W. R. 804; 44 J. P. 505. In that case an order had been made by justices upon one H. to pay expenses under section 150 of this Act. H. appealed to quarter sessions, and the sessions quashed the order subject to a special case for the opinion of the Queen's Bench Division. The High Court having affirmed the judgment of quarter sessions, the local board appealed to the Court of Appeal. It was held that the High Court in hearing the case stated were exercising an appellate jurisdiction, as the case came before them under the Public Health Act, 1875, s. 269, sub-sect. (7). The appeal was therefore an appeal from an inferior court within section 45 of the Judicature Act, 1873, and the decision of the High Court was final unless leave to appeal were given. But leave to appeal is not necessary when the Queen's Bench Division have decided with reference to a special case stated by quarter sessions when the court is exercising its original common law jurisdiction. *Reg.* v. *Savin*, 6

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Q. B. D. 309; 29 W. R. 638. This case was followed in *Reg.* v. *Illingworth*, 32 W. R. 451. There leave to appeal was held not to be necessary in the case of an appeal from a judgment of the Queen's Bench Division upon a special case stated by a court of quarter sessions under 5 & 6 Will. 4, c. 50, s. 108, for the jurisdiction of the Divisional Court is an original jurisdiction which has, in such circumstances, been expressly reserved by section 107 of that Act. In a still more recent case, after notice of appeal against a poor rate had been given to quarter sessions, the parties agreed under 12 & 13 Vict. c. 45, s. 11, to state a case for the opinion of the Queen's Bench Division, judgment to be entered by the Court of Quarter Sessions in conformity with that opinion:—Held, that the opinion given by the Queen's Bench Division was an order within the meaning of section 19 of the Judicature Act, 1873, and was therefore subject to appeal, and that the order was interlocutory and not final, as the case had to be sent back for judgment to be entered by the court of quarter sessions. *Peterborough* (*Mayor of*) v. *Stamford Union*, 53 L. J. M. C. 33.

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

Alteration of Areas.

270. The following enactments shall be made as to alteration of areas : Sect. 270.

Powers of Local Government Board in relation to alteration of areas.

(1.) The Local Government Board, by provisional order (*a*), may *dissolve* any local government district (*b*), and may merge any such district in some other urban or rural district or districts ; or it may by provisional order (*a*) declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be *included* in such last-mentioned district ; or it may by provisional order (*a*) declare any portion of a local government district immediately adjoining a rural district to be *included* in such rural district (*c*) ; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order ; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made unless and until the Local Government Board by provisional order (*a*) otherwise directs :

(2.) In the case of a borough comprising within its area the whole of an improvement Act district, or having an area co-extensive with such district, the Local Government Board by provisional order (*a*) may dissolve such district (*d*) and transfer to the council of the borough *all or any* (*e*) of the jurisdiction and powers of the *improvement commissioners* (*f*) of such district remaining vested in them at the time of the passing of this Act :

(3.) The Local Government Board may by *order* dissolve any special drainage district (*g*) constituted either before or after the passing of this Act in which a loan for the exe-

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cution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the Local Government Board may by *provisional order* (*a*) dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated (*h*).

(*a*) See section 297, *post*.

(*b*) See the definition in section 4, *ante*, p. 3. Many local government districts were formed under 21 & 22 Vict. c. 98, for the purpose of avoiding the Highway District Act, 1862, and consequently many were purely rural districts where the provisions of the sanitary laws as regards the machinery for working them was not requisite. A stop was put to this proceeding by 26 & 27 Vict. c. 17, which required the approval of the Secretary of State to the adoption in any place where the population was less than 3000, and by 35 & 36 Vict. c. 79, s. 25, whereby the consent of the Local Government Board was required in every case for the adoption of the Act. Hence, as it may be convenient that small districts now existing should be dissolved, the power is conferred upon the Local Government Board of making such a dissolution, though their order must be confirmed by Parliament. See section 297, sub-section (3). 26 & 27 Vict. c. 17, enabled such districts as those referred to to be abandoned, but as that Act has been repealed, they can only now be dissolved by the Local Government Board as in the text.

(*c*) No provision is made here as to a borough or an Improvement Act District. The extension of the boundaries of a borough can only at present be made by Act of Parliament, but as regards the boundaries of Improvement Act Districts, see section 303, *post*.

(*d*) According to section 10, *ante*, p. 22, all the sanitary powers under the Improvement Act are transferred to the town council. But the commissioners under their Act may have powers not so transferred, and their district may remain such for the execution of these powers. Hence the Local Government Board may dissolve the district and transfer these powers to the council, when this is deemed expedient.

This will not, however, be done except upon application by some party, which should be made in writing upon folio foolscap paper, and be signed by the clerk of the authority or of the commissioners, addressed to the President of the Local Government Board under cover directed to the Secretary.

(*e*) As all or any of the powers are to be transferred, it is to be presumed that some may be abandoned, for the district must apparently be dissolved altogether.

(*f*) See the definition in section 4, *ante*, p. 4.

(*g*) These districts were heretofore formed under the Sewage Utilization Acts, 29 & 30 Vict. c. 90, s. 5, and 30 & 31 Vict. c. 113, s. 6. In future they may be formed under section 277, *post*.

(*h*) Note that where there has been no loan the dissolution may be effected by a simple order, as to which see section 295, *post*; but where a loan has been raised there must be a provisional order to be duly confirmed by Act of Parliament. It is to be assumed that where the loan has been wholly liquidated a provisional order is not required.

Local Government Board may by provi-

271. The Local Government Board (*a*) may, by provisional order, declare any rural district, or any portion of any rural district or districts, to be a local government district; and from and after *the commencement of the order* (*b*), the district or portion of the

district or districts therein referred to shall become a *local government district* (*c*), and shall be subject to the jurisdiction of a local board, to be elected in manner provided by Schedule II. to this Act. Sect. 271. sional order constitute local government district.

The Local Government Board may, by any order constituting a local Government district under this section, divide such district into wards for the election of members of the local board (*d*).

(*a*) The board can take this step *ex mero motu*, but they can only frame a provisional order, and prior to their doing so must institute a public enquiry. See section 297, sub-section (1), *post*.
(*b*) This date is usually specified in the order, but see section 275, *post*.
(*c*) See the definition in section 4, *ante*, p. 3.
(*d*) See as to the division of districts into wards, Schedule II. (6), *post*.

272. The owners *and* ratepayers of any place situate in any rural district or districts (*a*), and having a *known and defined boundary* (*b*), may, by a resolution passed in manner provided by Schedule III. to this Act, declare that it is expedient that such place should be constituted a *local government district* (*c*); and the Local Government Board may, *if it thinks fit*, by order (*d*), made not less than six weeks after the receipt of a copy of such resolution by the said Board, declare such place to be a *local government district* (*c*), and from and after *the commencement of such order* (*e*), such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected in manner provided by Schedule II. to this Act (*f*). Local Government Board may by order constitute local government district in pursuance of a resolution of owners and ratepayers.

A petition (*g*) may be presented to the Local Government Board from any place so situated as aforesaid (*h*) and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by *one tenth* of the persons rated to the relief of the poor and resident within such boundaries (*i*), and shall be supported by such evidence as the Local Government Board may require (*k*). The Local Government Board may, after local inquiry as to the genuineness of the petition (*l*), and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place (*m*), and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne (*n*).

Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of

Sect. 272. this Act, be deemed to be a place with a known and defined boundary (*o*).

(*a*) There must be twenty ratepayers *and* owners resident in the place. See Schedule III. (1). It will be noticed that the district may be formed out of two rural districts, that is, out of two unions; but it is not easy to understand how a place with a known and defined boundary can be part of two unions.

(*b*) This is a very vague term. It is not clear by whom the boundary is to be known. Doubtless general reputation must be referred to, and that is frequently a matter of considerable uncertainty. The boundaries of parishes are for the most part well known, and so are those of townships and chapelries, especially where these make their own poor rate separately. There are also many places where the boundaries have been defined by statute. And it occasionally happens that districts have been settled by orders in council and similar authority under the general statutes applicable to new ecclesiastical parishes. In these cases the text can be safely applied. Thus a district formed for ecclesiastical purposes under 6 & 7 Vict. c. 37, consisting of parts of two townships, each of which separately maintained its own poor and highways, was held to be "a place having a known and defined boundary." *Reg.* v. *Northowram and Clayton* (*Ratepayers of*), L. R. 1 Q. B. 110; 7 B. & S. 110; 35 L. J. Q. B. 90; 30 J. P. 181. In another case the parish of L., containing 1400 acres, comprised within its area the corporate borough of L., which was in extent 100 acres. The parliamentary borough of L. comprised the whole of the parish of L. and part of another parish. It was held that the parliamentary borough, including within its limits a less place, viz., the parish of L., was not within the corresponding provisions of the Act of 1858, but that the parish of L. was a place having a known and defined boundary. *Reg.* v. *Hardy* (*Secretary of State for the Home Department*), L. R. 4 Q. B. 117; 9 B. & S. 926; 38 L. J. Q. B. 9; 19 L. T. (N.S.) 173; 33 J. P. 21. In order that a district may be a place within the meaning of this section, it is not necessary that it should be a legal district having a legal boundary of the whole enclosed area; it is sufficient if the place has an actual known and defined boundary, or one that is physical, visible, and notorious, so that there may be no mistake as to the limits within which the Act is to apply. Certain small portions of the township of R. lay within and were surrounded by the adjoining township of G. It was held that the township of G. together with the inclosed portion of R. was within the meaning of the section. *Reg.* v. *Local Government Board* or *Reg.* v. *Grasmere*, L. R. 8 Q. B. 227; 42 L. J. Q. B. 131; 21 W. R. 445.

(*c*) See the definition in section 4, *ante*, p. 3.

(*d*) This is a simple order of the board, as to which see section 295, *post*. It will be seen that the board have a discretion as to the constitution of this district.

As to the forwarding of the copy of the resolution, see Schedule III. (7), *post*.

(*e*) See section 275, *post*, as to the commencement of the order.

(*f*) As to the costs of these proceedings, see Schedule III. (8), *post*.

(*g*) The petition should be in writing on foolscap paper, addressed to the President of the Local Government Board, under cover to the Secretary, and the names should be affixed at the foot of the petitition as nearly as practicable.

(*h*) That is in a rural district or districts. The place may be situated in two districts, as where it runs into two unions. The term *place* is very indefinite. As to the interpretation of this word in statutes, see *Reg.* v. *Charlesworth*, 20 L. J. M. C. 181; *Smith* v. *Redding*, L. R. 4 Q. B. 480; 30 J. P. 518; *Rice* v. *Slee*, L. R. 7 C. P. 378; 36 J. P. 454.

(*i*) The owners are omitted here, probably because they cannot readily be ascertained, and this is only a preliminary to a formal enquiry.

(*k*) In strictness the board can make no requisition until the petition has been presented, but it may be well for the promoters of the proposal to apply to the board for instructions before any proceedings are commenced. **Note to Sect. 272.**

(*l*) See as to such enquiry, section 293, *post*.

(*m*) A question was raised but not decided whether under the corresponding provisions of 21 & 22 Vict. c. 98, s. 16, a place might be included within the boundaries as settled which was not within those proposed in the petition. *Smith* v. *Todmorden Local Board*, 1 B. & S. 412; 30 L. J. Q. B. 305; 4 L. T. (N.S.) 509; 25 J. P. 518. It was properly contended that such extension would be unfair upon parties in the extended limit, inasmuch as they could not oppose the petition. But in the case just cited the proceedings taken to question the legality of the order were too late. See section 295, *post*, as to the conclusive character of the order.

(*n*) See section 294, *post*, as to the means of enforcing this order. The costs referred to in this section appear to be those of the petitioners and their opponents, but see section 294, *post*.

(*o*) The proceedings will be conducted according to the provisions in Schedule III., and if a resolution be passed adopting the Act, the subsequent proceedings will be the same as under the first paragraph.

273. Where not less than one twentieth of the owners (*a*) *and* ratepayers of any place (such twentieth to be one twentieth in number of the owners and ratepayers (*b*) of *the place* (*c*) taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the place (*d*)), in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection. Objection to resolution.

Such petition shall be subscribed by the owners and ratepayers presenting the same (*e*), and shall be presented within *six weeks* from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan (*f*).

The Local Government Board may after local inquiry (*g*) make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.

(*a*) See the definition of *owner* in section 4, *ante*, p. 6. The term *ratepayer* is explained in the last section.

(*b*) It is to be observed that the petition under this section is to come from ratepayers and owners, and if the reference be made to the objectors numerically, there must be one twentieth of the owners and ratepayers taken together. In many cases it will be impossible to determine the total number of these within a reasonable time. It is easy to ascertain the ratepayers, but in populous places it is very difficult to discover all the owners, and unless they are all discovered the proper numerical proportion cannot be determined. The difficulty will not

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be so great in reference to the property, as that can be ascertained from the poor rate with reasonable accuracy.

(*c*) This applies to the whole of the proposed district, therefore if all the ratepayers and owners of any particular part of it should object, their objection will be unavailing unless they constitute one twentieth part of the whole proposed district.

(*d*) This means the property rateable to the poor rate, and according to *Baker* v. *Marsh*, 4 E. & B. 144; 24 L. J. Q. B. 1; 19 J. P. 117, will doubtless be construed to apply to the *net annual value* of the property.

(*e*) This petition should be prepared and sent as described in note (*g*) to the last section. The subscription must be by the parties themselves; it is very doubtful whether an agent is competent to subscribe for them. See *Toms* v. *Cuming*, 8 Scott, N. R. 910.

(*f*) This plan need not be on a large scale. A folio foolscap plan will suffice in ordinary cases.

(*g*) See section 293, *post*. Thus there may be two inquiries. It is most advisable, therefore, that when the boundaries are inquired into on the petition from the ratepayers, the objections of the owners and ratepayers here contemplated should be brought forward so as to render this second inquiry (expensive and irritating as it is likely to be) unnecessary. As to the costs of this inquiry see section 294, *post*.

Appeal to Local Government Board in case of alleged invalidity of vote.

274. Any owner or occupier (*a*) who disputes the validity of the vote *for* (*b*) the adoption of the resolution may appeal (*c*), within *six weeks* from the declaration of the decision of the meeting (*d*), to the Local Government Board, setting forth the ground on which he disputes the validity of the vote; and the Local Government Board may, on such appeal, after local inquiry (*e*), make such order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal (*f*).

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof (*g*), or to any proceedings on which such order was founded, unless the objector gives *fourteen days* notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district (*h*).

(*a*) The word *owner* is defined in section 4, *ante*, p. 6. The term *ratepayer* appears to be explained in section 272, *ante*, p. 327.

(*b*) No appeal is given from the vote rejecting the adoption of the Act. This is not necessary, inasmuch as the proposal may be renewed at any time, or the Local Government Board may, by provisional order, form the district themselves if they should think it expedient.

(*c*) This appeal should be prepared and sent in the same manner as a petition under section 272. See note (*g*) to that section.

(*d*) See as to this, Schedule III. (6), *post*. The declaration referred to appears to be that of the summoning officer. 26 & 27 Vict. c. 17, s. 3, specified the time and the date of the resolution adopting the Act, but there was some doubt as to this when a poll was taken. **Note to Sect. 274.**

(*e*) See as to this, section 293, *post*.

(*f*) It will be seen that the order will dispose of two sets of questions: (1) those arising on the appeal; and (2) those on the validity of the vote. The first will relate to the qualification of the appellant, the due promptitude of the appeal, the sufficiency of the statement, and matters of a like character. The second will involve all the inquiries arising out of the conduct of the election itself.

A somewhat similar provision is contained in 5 & 6 Vict. c. 57, s. 8, with regard to questions arising on the election of guardians.

(*g*) By section 295, *post*, re-enacting 21 & 22 Vict. c. 98, s. 81, this order of the Local Government Board is declared to be binding and conclusive. Accordingly the Court of Queen's Bench decided that when an appeal had been made under the corresponding section of 21 & 22 Vict. c. 98, to the Secretary of State, and he had given his decision, it was conclusive, though on the face of the order the *ratio decidendi* was doubtful. *Ex parte Bird*, 1 E. & E. 931; 28 L. J. Q. B. 223; 5 Jur. (N.S.) 1009; 7 W. R. 476; 23 J. P. 691. Nevertheless, if there be any defect in the original proceedings so as to prevent the jurisdiction of the Local Government Board, the order may, it is presumed, as in the cases of orders of justices, be impeached on that ground.

(*h*) See as to this, section 272, *ante*, p. 327, and the next section. This provision is adopted from 21 & 22 Vict. c. 98, s. 21, and upon that section the Court of Queen's Bench refused to entertain an objection to the legality of an order of a Secretary of State after the expiration of the time mentioned in the order which he had made. *Smith* v. *Todmorden Local Board*, *ante*, p. 329.

General provisions as to orders.

275. Every order made by the Local Government Board under this part of this Act shall specify a day on which such order shall come into operation (in this Act referred to as *the commencement of the order*); and from and after (*a*) the commencement of the order all the powers, rights, duties, capacities, liabilities, obligations, and property which under this Act are exerciseable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district (*b*): Provided that in the case of the constitution of a *new local government* district, all the powers, rights, duties, capacities, liabilities, obligations, and property, which *under this Act* (*c*) are exerciseable by or attaching to or vested in any local authority or authorities having, under this Act jurisdiction in the area so constituted a local government district, shall continue to be exerciseable by, attached to, and vested in such authority or authorities, until the day of the *first meeting of the local board* (*d*) for the district so constituted.

Any order made in pursuance of this part of this Act may, if necessary, provide for the settlement of any differences, or the

Sect. 275. adjustment of any accounts or apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any powers conferred by this part of this Act (*e*), and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this part of this Act, the order shall prescribe the number of members to be elected for the district when altered.

The Local Government Board may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

(*a*) This enactment removes the doubt which existed under the former Acts as to when the formation took complete effect.

(*b*) See as to the transfer of liabilities, *Sinnott* v. *Whitechapel Board of Works*, 3 C. B. (N.S.) 674; 22 Jur. 263; 27 L. J. C. P. 177; 6 W. R. 289; 22 J. P. 290; *Pettiward* v. *Metropolitan Board of Works*, 19 C. B. (N.S.) 489; 34 L. J. C. P. 301; 12 L. T. (N.S.) 764.

(*c*) A decree was made in 1875 against the corporation of B. as the sanitary authority of B., granting a perpetual injunction to restrain them from allowing sewage to flow into a river so as to be injurious to health or a nuisance to the plaintiffs; but the injunction was suspended for five years, to give the corporation an opportunity to execute certain works. After the expiration of that time the plaintiffs desired to enforce the injunction, but in the meantime the B. T. & R. district board had been constituted under this Act as the sanitary authority of the district, in the place of the corporation of B. The plaintiff brought an action against the B. T. & R. board, claiming a declaration that they were entitled to the same benefit of the decree as against the defendants in the present action, as if they had been defendants in the former suit. The defendants demurred. Held (reversing the decision of BACON, V. C.) that the B. T. & R. board were not by this section made subject to any of the liabilities of their predecessors except those attaching under the Act, and were not, therefore, bound by the decree against them, and that there being no allegation of any nuisance committed by the B. T. & R. board, the plaintiffs had no cause of action and the demurrer must be allowed. *Attorney-General* v. *Birmingham Tame and Rea Drainage Board*, 17 Ch. D. 685; 50 L. J. Ch. 786; 44 L. T. (N.S.) 906; 29 W. R. 793; 46 J. P. 36.

(*d*) See as to this Schedule I. (12), *post*. This proviso, which is new, prevents the confusion which arose when the new district was formed, but there was no body legally empowered to act in it previous to the election of the board.

(*e*) See further, section 304, *post*, as to the adjustment of accounts between districts. This order will be final; see section 295, *post*.

Local Government Board may invest rural

276. The Local Government Board may, on the application (*a*) of the authority of any rural district, or of persons rated to the relief of the poor (*b*), the assessment of whose hereditaments amounts at the least to *one tenth* of the net rateable value (*c*) of such district, or of any contributory place therein (*d*), by order (*e*) to be published

in the *London Gazette* or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in *urban districts* to be in force in such *rural district* or contributory place, and may invest such authority with *all or any* (*e*) of the powers, rights, duties, capacities, liabilities, and obligations, of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the board as to the time, portion of the district, or manner during at and in which such powers, rights, duties, liabilities, capacities, and obligations, are to be exercised and attached: Provided that an order of the Local Government Board made on the application of one tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

Sect. 276. authority with powers of urban authority.

(*a*) This application should be made in writing upon foolscap folio paper addressed to the President of the Board, under cover to the Secretary, and if it come from the guardians as the rural authority, should be signed by their clerk. If it come from others, the names should be affixed to the application as near as conveniently may be.

(*b*) It is immaterial how long they have been rated, or whether they have or have not paid their rates.

(*c*) This will appear from the valuation lists of the union or of the contributory place.

(*d*) The application may come not only from the occupiers of one tenth in value of the whole of the district, but also from *one tenth* in value of any parish or other contributory place within it, however small; but then the powers will only extend to the part from which the application comes. See the proviso at the end of the section.

(*e*) Note these words. Any single power conferred by this Act upon urban authorities only, such for example as the powers relating to lighting streets under sections 161–2, *ante*, p. 186, may by this section be conferred on a rural authority.

277. It shall be lawful for a rural authority, by resolution (*a*) to be approved by the Local Government Board (*b*), but not otherwise, to constitute any portion of the area within their jurisdiction a *special drainage district* (*c*), for the purpose of charging thereon exclusively the expenses of works of sewerage water supply or of other works, which by this Act are or by order of the Local Government Board may be declared to be *special expenses*, and thereupon such area shall become a *separate contributory place* (*d*).

Power of rural authority to form special drainage districts.

(*a*) Although the statute does not prescribe any previous notice or other preliminaries, no such resolution should be passed by the guardians without due deliberation and sufficient notice, so that the ratepayers of the district to be affected by it may have an opportunity of being heard by the guardians

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before it is passed, and, if necessary, of appealing to the Local Government Board.

A copy of the resolution, when passed, should be forwarded in the same way as other resolutions of the guardians are transmitted to the Local Government Board.

(*b*) In this case the Local Government Board are not required to institute an inquiry, but they will, according to their practice, consult their inspector of the district, and if there be any opposition they will generally order an inquiry.

(*c*) There is no legal definition of this term. It is, however, explained in section 229, *ante*, p. 263.

(*d*) See section 229, *ante*, p. 263, which declares the meaning of a contributory place, and sets forth what are *special expenses*.

Power to settle disputes as to boundaries of districts.

278. On the application (*a*) of any urban authority (being a local board or improvement commissioners), the Local Government Board may, by order (*b*) after local inquiry (*c*), settle any dispute as to the boundaries of the district of such authority; such order shall be published (*d*) in some local newspaper circulating in the district to which it relates, and from and after its commencement (*e*) shall be *conclusive* on the question determined by it.

(*a*) This application should be made in writing in the manner described in note (*d*) to section 270, *ante*, p. 326.

(*b*) As to this order, see section 295, *post*.

(*c*) See section 293, *post*. Note that this provision does not apply to the boundaries of boroughs, unless indeed the dispute be between the borough and some other urban authority, and then *quære*.

(*d*) This publication must be borne by the authorities interested, and at their cost.

(*e*) See section 275, *ante*, p. 331. This declaration of the conclusiveness of the order is repeated in section 295, *post*.

Union of Districts.

Formation of united district.

279. Where, on the application (*a*) of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places (*b*) in any rural district or districts, to be formed into a *united district* for all or any of the purposes following; (that is to say),

(1.) The procuring a common supply of water; or

(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or

(3.) For any other purposes of this Act;

the Local Government Board may by provisional order (*c*) form such districts or contributory places into a *united district* (*d*).

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act (*e*). Sect. 279.

(*a*) This should be in writing as described with reference to a petition under section 272, *ante*, p. 328. It should set out the object in view, the necessities or advantages requiring or resulting from the proposal, and such details as the case may require. The application may be joint or several, but the former will be preferable as causing the least labour to all the parties.

(*b*) As to what are contributory places, see section 229, *ante*, p. 263.

(*c*) See section 297, *post*.

(*d*) It must be remembered that section 285, *post*, enables two or more authorities to combine of themselves for the execution of works for mutual benefit; and section 28, *ante*, p. 45, provides for agreements in respect of certain joint user of works.

(*e*) The proportion of these costs must be settled by the respective authorities, as it does not appear that the Local Government Board have any jurisdiction in the matter.

280. The governing body of a united district shall be a joint board consisting of such *ex officio* members (*a*) and of such number of elective members as the Local Government Board may by the provisional order forming the district determine. Governing body of united district.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any license in mortmain (*b*).

(*a*) The Local Government Board must decide who are to be *ex officio* members, as they are not defined or described by the Act.

(*b*) This is similar to the provision contained in section 7, *ante*, p. 19.

281. The provisional order forming a united district under this Act shall define the purposes for which such united district is formed, and the *powers* (*a*), rights, duties, capacities, liabilities, and obligations under this Act which the joint board is authorized to exercise or perform, or is made subject to, and shall contain regulations as to the *qualification* and *mode of election* of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts (*b*). Contents of provisional order forming united district.

Upon the constitution of a joint board the local authorities

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having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorized to exercise or perform or is made subject to; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties (*c*).

(*a*) Borrowing powers are granted to the joint board by section 244, *ante*, p. 280.

(*b*) The board will doubtless adopt as far as practicable the provisions of this Act applicable to single authorities.

(*c*) Care should be taken that the common object of combination is not lost sight of in any delegation of powers or duties under this clause.

Meetings and proceedings of joint boards.

282. Meetings of any joint board shall be held and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board (*a*)) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act.

(*a*) The order here referred to is that made in pursuance of the last section.

Expenses of joint board.

283. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the *rateable value* (*a*) of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being (*b*).

(*a*) *Rateable value* corresponds with *full net annual value*, which is defined in section 4, *ante*, p. 8, under the word *rack-rent*.

(*b*) The valuation list is made pursuant to the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103. See *Lumley's Union Assessment Committee Acts*.

Payment of contributions to joint board.

284. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority,

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and may be recovered accordingly (*a*), such contribution in the case of a rural authority being deemed to be *general expenses* (*b*).

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a *summary manner* as in this Act mentioned (*c*) to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from *contributory places* of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof (*d*).

(*a*) That is, in some civil court of law, namely, in the county court or in the High Court of Justice according to the amount claimed. See *Richardson* v. *Willis*, L. R. 8 Ex. 69; 42 L. J. Ex. 15, 68; 27 L. T. (N.S.) 828. There it was said to be a general rule that where a statute gave a right to a sum of money and provided no means of recovering it, the remedy was by action. But as this may be a dilatory process, the next paragraph substitutes an alternative mode of proceeding.

(*b*) As to what are general expenses, see section 229, *ante*, p. 263.

(*c*) See section 292, *post*.

(*d*) See section 229, *ante*, p. 263, as to what are contributory places, and section 230, *ante*, p. 266, as to the recovery of amounts due from them.

Power to execute works in adjoining districts, and to combine for execution of works.

285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

This section does not render necessary the consent of the Local Government Board or any other authority. But if money is required to be borrowed for these works, the Local Government Board must give their consent to the loan, and consequently will require to be satisfied as to the necessity and propriety of the works. See the evidence of Sir John Lambert, *ante*, p. 270.

It must be remembered that as regards the communication of sewers in adjoining districts, section 28, *ante*, p. 45, requires the sanction of the Local Government Board.

Sect. 286. Districts may be united for appointing a medical officer of health.

286. Where it appears to the Local Government Board, on any representation made to it (*a*) that the appointment of a medical officer of health (*b*) for two or more districts situated *wholly or partially in the same county* (*c*) would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by order (*d*) unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives (*e*)) which, in the opinion of the said Board, require regulation for the purposes of this section; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts:

Provided that no *urban district* containing a population of twenty-five thousand and upwards, or (in the case of a *borough*) having a separate court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such district or borough (*f*).

Not less than *twenty-eight* days notice that it is proposed to make an order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union, and if within *twenty-one* days after such notice has been given to any such authority they (*g*) give notice to the Local Government Board, that they object to the proposal, the Local Government Board may include their district in the union by a provisional order (*h*) but not otherwise.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for the united districts as the said Board may think fit; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration to be paid by the local authority or authorities of the district or districts within which his duties under this section are

performed as those authorities may (*i*), with the approval of the Local Government Board, determine (*k*). Sect. 286.

(*a*) This representation should be in writing on folio foolscap paper addressed to the president under cover to the secretary, although the text does not prohibit the making of an oral representation.

(*b*) See as to the appointment of this officer, section 189, *ante*, p. 218.

(*c*) It will suffice if a part of one district is in the same county as the others.

(*d*) See section 295, *post*.

(*e*) This will include travelling expenses and cost of living. In some cases hotel expenses may be recognized as necessary.

(*f*) The consent of the majority of members assembled at a meeting specially convened for the purpose will doubtless suffice.

It is to be observed that this consent is a condition precedent to the constitution of the district. A resolution proposed and carried will be sufficient, and a copy under the hand of the clerk of the authority will be sufficient evidence of it.

No mode is pointed out for ascertaining the population. The report on the last census will in many cases suffice. It is doubtful whether any other course is open in cases where such report will not decide the question.

(*g*) This applies, not to the urban district previously noticed, but to a rural district or an urban district not within the description.

(*h*) As to this order, see section 297, *post*. Where this order is attempted to be confirmed by Act of Parliament, it may be opposed by any party legally interested, as shown hereafter.

(*i*) See section 191, *ante*, p. 222, as to the appointment of a district medical officer to act under this statute.

(*k*) Seeing that the local authority have a discretion as to what salary they will assign, they should settle this before the assignment of the duties is made by the Local Government Board, as that Board will not assign any duties, nor the officer accept the appointment unless adequate remuneration is to be given.

Port Sanitary Authority.

Constitution of port sanitary authority.

287. The Local Government Board may, by provisional order (*a*), permanently constitute any *local authority* (*b*) whose district or part of whose district forms part of or abuts on any part of a *port* (*c*) in England, or the waters of such port, or any conservators commissioners or other persons having authority in or over such port or any part thereof, (which local authority conservators commissioners or other persons are in this Act referred to as a "riparian authority,") the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority.")

The Local Government Board may also by provisional order (*a*) permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and

Sect. 287. may prescribe the mode of their joint action; or by forming a *joint board* consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district (*d*). Moreover the Local Government Board may by provisional order (*a*) permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

In any case in which the Local Government Board are by this section authorized permanently to constitute by provisional order a port sanitary authority, the said Board may, if it thinks fit, until such order has been made and confirmed by Parliament (*e*), *temporarily* constitute by order any such authority, and may *from time to time renew any such last-mentioned order*, and may by any order so made or renewed make any such provisions as it is by this section empowered to make by provisional order (*f*).

Any order constituting a port sanitary authority may assign to such authority *any* powers rights duties capacities liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid (*g*); and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act (*h*).

A *port* shall mean a port as established for the purposes of the laws relating to the customs of the United Kingdom (*i*).

(*a*) See section 297, *post*.

(*b*) Note the general character of this term which is defined in section 4, *ante*, p. 5.

(*c*) See the definition of this term at the end of the section.

(*d*) See how this is to be done in section 279, *ante*, p. 334.

(*e*) As to the conclusiveness of this temporary order while it is in force, see section 295, *post*.

(*f*) These words providing for the renewal of the order did not exist in 35 & 36 Vict. c. 79, s. 20. Some doubt existed as to whether the Board possessed the power of renewal under that Act, and accordingly section 325 of this Act, *post* (now repealed), was passed to ratify and confirm their renewed orders.

(*g*) The orders issued by the Board do contain some of the provisions, and where they do so the powers and duties of the local authorities in the places referred to are *pro tanto* superseded. By way of illustration reference may be made to the provisional order permanently constituting a port sanitary authority for the port of Plymouth. It will be found in *Glen's Local Government*

Orders at p. 258. It provides for the number and qualification of the members of the port sanitary authority, for their continuance in office, casual vacancies, meetings, powers of the authority, expenses, accounts, audit, and the settlement by arbitration of any disputes between the joint board and any reparian authority, or between any two or more riparian authorities respecting any matter arising out of the provisions of the order. See also the general order for the accounts of such authorities, *Glen's Local Government Orders*, p. 268. Note to Sect. 287.

Powers of borrowing are given to port sanitary authorities by section 244, *ante*, p. 280.

(*h*) See section 279, *ante*, p. 334.

(*i*) See the Customs Laws Consolidation Act, 1876, 39 & 40 Vict. c. 36, ss. 11–16. These sections provide that the Commissioners of the Treasury may by their warrant appoint any port in the United Kingdom and declare the limits thereof, and may annul the limits of any port already appointed or to be thereafter set out, and may declare the same to be no longer a port: provided that such alterations or variations in limits shall not affect any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her Majesty's Customs) granted to any person or body by any Act of Parliament, &c., but they shall be deemed to be and remain the same for the purposes of such Act as if no such alteration or variation had been made. The Commissioners of the Treasury may from time to time revoke or alter any warrant made by them.

Jurisdiction of port sanitary authority.

288. The order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or such portions of the district within the jurisdiction of any riparian authority as may be specified in the order.

As to what is a *riparian authority*, see the last section.

Delegation of powers by port sanitary authority.

289. A port sanitary authority may, with the sanction of the Local Government Board (*a*), delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the order of the Local Government Board, but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the order of the Local Government Board within the district of such port sanitary authority (*b*).

(*a*) Application should be made in writing in the manner described in the several notes above referring to application by local authorities.

(*b*) This is merely an emphatic reiteration of what has been provided in the previous sections.

Expenses of port sanitary authority.

290. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just (*a*).

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Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act (*b*).

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct.

Any contribution payable by a riparian authority to such port sanitary authority shall be a *debt* due from them, and may be recovered accordingly (*c*), such contribution in the case of a rural authority being deemed *general expenses* of that authority (*d*). If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed *in the summary manner* in this Act mentioned (*e*) to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several riparian authorities are combined in the district of one port sanitary authority the Local Government Board may by order (*f*) declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.

(*a*) The provisional order issued to the port of Liverpool, confirmed by 37 & 38 Vict. c. clii., shows how the board have adjusted the proportions in a case of much complexity.

(*b*) As to these expenses in an urban district, see section 207, *ante*, p. 233. In a rural district they will probably divide themselves into general and special, and reference must therefore be made to section 229, *ante*, p. 263.

(*c*) That is by action. See note (*a*) to section 284, *ante*, p. 336.

(*d*) See section 229, *ante*, p. 263.

(*e*) See section 292, *infra*.

(*f*) See as to this order, section 295, *post*, p. 345.

Sect. 291. Provision as to port of London.

291. The mayor aldermen and commons of the City of London shall be the port sanitary authority of *the port of London*, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

The port of London embraces a very wide area and extends far beyond the limits of the metropolis, but the corporation of the city bears all the expenses.

This is one of the few sections of the Act which applies to the metropolis.

Proceedings for raising a sum for payment of debt within district of a defaulting authority.

292. Where any port sanitary authority joint board or other authority are authorized, in pursuance of this Act, to proceed *in a summary manner* (*a*) to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorized for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority (*b*).

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers (*c*), the authority so authorized as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority (*d*); and where the defaulting authority (*e*) have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorized as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities (*d*).

Any precepts issued by the authority so authorized as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority (*b*).

The authority so authorized as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding *ten*

Sect. 292. *per cent.* on the debt due, and may defray thereout all costs charges and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorized as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs charges and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

(*a*) See section 284, *ante*, p. 236, and section 290, *ante*, p. 341.

(*b*) Refer for these powers to Part VI., *ante*.

(*c*) This, in the case of an urban sanitary authority in default, applies where a borough rate, improvement rate, or district rate can be levied. A rural sanitary authority cannot levy a rate other than an improvement rate (*quære* whether that is available here) upon individual ratepayers.

(*d*) See Part VI., and section 256, *ante*, p. 294.

(*e*) This applies to the case of a rural sanitary authority, so that where the guardians of a union comprised in a joint district make default, the joint board may issue their precepts to the overseers of the parishes in the union.

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

Sect. 293.

Power of Board to direct inquiries.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act.

These powers in relation to the public health were assigned to the Privy Council by 21 & 22 Vict. c. 97, s. 3, and transferred to the Local Government Board by 34 & 35 Vict. c. 70. This passage, therefore, only repeats the provisions already existing. It will be seen that certain inquiries are directed by the Act; as to these the board have no discretion. They have, however, a discretion as to other inquiries for the purposes of the Act.

Orders as to costs of inquiries.

294. The Local Government Board may make orders (*a*) as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the *superior courts* (*b*) of law on the application of any persons named therein.

(*a*) As to the Board's orders, see next section. The Board interpret this section as applying to costs which they incur in these inquiries and act accordingly. 11 & 12 Vict. c. 68, s. 11, and 21 & 22 Vict. c. 98, s. 23, contained provisions for the reimbursement of the Treasury for the costs of inquiries under those Acts, but these provisions are not renewed.

(*b*) That is, a division of the High Court of Justice.

1 & 2 Vict. c. 110, contains provisions for enforcing payment of costs upon rules of court, and these will be available against individuals; but with regard to costs awarded against the local board, the effectual remedy will be by *mandamus*.

Orders of Board under this Act.

295. All *orders* made by the Local Government Board in pursuance of this Act (*a*) shall be binding and conclusive in respect of the matters to which they refer (*b*), and shall be *published* in such manner as that Board may direct (*c*).

(*a*) Questions of some difficulty may arise as to the effect of orders which are alleged to exceed the powers given by this Act, or with respect to which

Note to Sect. 295.

the preliminaries prescribed by this Act have not been strictly complied with. The confirmatory Acts formerly only confirmed the orders so far as they were authorized by the Acts. In such cases it becomes important to determine how far the requisite preliminaries are conditions precedent to the validity of the order although confirmed by statute. The following cases will illustrate these remarks. The general board of health made a provisional order extending the Public Health Act, 1848, to T., a district within which were parts of the S. turnpike roads, made under local turnpike Acts. A local Sanitary Act also applied to the district, which was altered by this order, and it was directed that after confirmation of the order by Parliament, section 50 of the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the Sanitary Act. This provisional order was confirmed by the statute *so far as authorized by the above Act*. It was held that this part of the provisional order was not authorized, and consequently was void. The court considered that the toll on the turnpike road was not a matter which came within the scope of the Public Health Act. *Clayton* v. *Fenwick*, 6 E. & B. 114; 25 L. J. Q. B. 226; 20 Jur. 635; 20 J. P. 180. An order of the general board of health rendering the same Act applicable to the borough of T., but excepting the operation of so much of section 88 as provided for the rating of pasture lands, railways, &c., at a reduced rate, was held to be invalid in respect of this exception. *North Eastern Railway Company* v. *Teignmouth* (*Mayor, &c., of*), L. R. 3 Q. B. 723; 37 L. J. M. C. 183; 9 B. & S. 616; 32 J. P. 822. And see *Frewen* v. *Hastings Local Board*, 16 L. T. (N.S.) 553. But where an order, confirmed by statute, repealed a local Act which created a district rate, but exempted certain property from such rate, and the clause containing the exemption was preserved by such order, the court held that the order had no operation with regard to rates imposed by the Public Health Act, for the rating clause of the Act having been repealed, there was nothing to which the exemption could apply. *Turner* v. *Halifax* (*Mayor of*), 9 B. & S. 623 *n.*

In *Reg.* v. *Robinson*, 17 Q. B. 466, it was held that an order of the Poor Law Commissioners (whose powers are now transferred to the Local Government Board), might be quashed in part on *certiorari* if the parts were sufficiently divisible. But see section 262, *ante*, p. 302.

As to the force and effect of departmental orders which affect the rights of property, see *Frewin* v. *Lewis*, 9 Sim. 66; 4 My. & C. 249; *Foster* v. *Dodd*, 7 B. & S. 140; 8 B. & S. 842; 32 J. P. 20. In *Attorney-General* v. *Manchester* (*Bishop of*), L. R. 3 Eq. 455; 15 L. T. 646; 15 W. R. 673, STUART, V.C., quotes the following passage from the judgment of COTTENHAM, L.C., in *Frewin* v. *Lewis* (*supra*), as laying down the rule of law:—"I apprehend that the limits within which this court interferes with the acts of public functionaries constituted like the Poor Law Commissioners, are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by the law, this court will not interfere to see whether any alteration or regulation which they may direct is good or bad; but if they are departing from that power which the law has vested in them,—if they are assuming to themselves power over property which the law does not give them,—this court no longer considers them as acting under the authority of their commissioners, but treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority."

(*b*) Besides other modes of enforcing such orders they may be enforced under certain circumstances by *mandamus* and perhaps by indictment. See *Reg.* v. *Walker*, L. R. 10 Q. B. 355; 44 L. J. M. C. 167; 33 L. T. (N.S.) 167; 40 J. P. 230.

With regard to defaulting authorities, see section 299, *post*.

(*c*) See section 135, *ante*, p. 132, and *Reg.* v. *Lowe*, cited in the note to that section.

Sect. 296.

Power of inspectors of Local Government Board.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board (*a*), have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*b*).

(*a*) Note the limitation to inquiries directed by the Board.
(*b*) 4 & 5 Wm. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors.

Provisional Orders by Board (a).

As to provisional orders made by Local Government Board.

297. With respect to provisional orders authorized to be made by the Local Government Board under this Act, the following enactments shall be made :—

(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates (*b*) :

(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable (*c*), shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections (*d*) :

(3.) The Local Government Board *may* (*e*) submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament (*f*) :

(4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills (*g*).

(5.) Any Act confirming any provisional order made in pursu-

Sect. 297.

ance of any of the Sanitary Acts (*h*) or of this Act, and any order in council (*i*) made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:

(7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with (*k*):

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act (*l*).

(*a*) See the notes to section 295, *ante*, p. 348.

In the case of *Morley, In re*, L. R. 20 Eq. 17; 32 L. T. (N.S.) 524; 23 W. R. 532, the Master of the Rolls, referring to a provisional order made by the Board of Trade observed:—"The legislature, instead of allowing proceedings to be taken before a committee of either House, decided that these inquiries" (*i.e.*, preliminary to the making of the order), "might be prosecuted more cheaply and more beneficially before a local tribunal or persons appointed to inquire into the matters locally. These proceedings are instituted, and the parties interested, instead of applying to Parliament, apply to the Board of Trade, and after making a proper investigation in the locality, the Board of Trade makes a provisional order, and then if Parliament thinks fit, that provisional order, generally with a great many more, is confirmed by an Act which is not procured at all by the applicants, but by the Board of Trade, that is by the executive government of the country. The result is that there has been an entire change of system, and all that the applicant obtains is the provisional order, and there is no proceeding in Parliament with which he really has anything to do *directly*." Note the limitation of these last words.

The Board have issued a circular letter and instructions relating to applications for provisional orders by local authorities. These should be carefully attended to. The circular and instructions will be found set out at 46 J. P. 521.

(*b*) It is the practice of the Board to frame the advertisement and provide for its publication, and though they pay the charge in the first place, they include it in the order for expenses. Reference should be made to section 176, *ante*, p. 206, as to the advertisements, &c., necessary before applying for a provisional order to authorize the compulsory purchase of land.

(*c*) In some cases the Act itself requires an inquiry. In others the Board themselves deem it advisable for the purpose of guiding their own actions. It seems that under section 176, sub-section (4), *ante*, p. 206, the inquiry may in some instances be dispensed with.

(*d*) It is obvious that persons may also attend and be heard in support of the proposal.

The Board frame the order themselves, though they do not decline to accept, as aids, clauses drawn up and submitted to them by the parties. Such drafts should be on folio foolscap paper.

(*e*) The Board can exercise their discretion as to submitting the order to Parliament at all, and consequently as to when they will do so. They generally group several orders together in one Bill in such a manner as to prevent as far as practicable unopposed orders from being delayed by the companionship of such as may be contested. They can choose in which House to bring in the Bill, and accordingly at the latter part of the session they frequently introduce it in the House of Lords. Note to Sect. 297.

(*f*) Therefore the order cannot be quashed on *certiorari*. *Reg.* v. *Hastings Local Board*, 6 B. & S. 401; 34 L. J. Q. B. 159. But the Chancery Division by injunction will restrain a local board from prosecuting an application for a provisional order when the application is contrary to equity, and will not drive the applicant to petition Parliament against the Bill. *Telford* v. *Metropolitan Board of Works*, L. R. 13 Eq. 574; 41 L. J. Ch. 589; 26 L.T. (N.S.) 150; 20 W. R. 481.

(*g*) As most provisional orders are made for the benefit of some particular locality and are not framed by the Local Government Board spontaneously, if opposition be made to the order, its defence before the committee is left to the promoters of the proposition contained in the order, notwithstanding the observations of the Master of the Rolls, *supra;* at the same time the Board reserve a power of withdrawing any order from the Bill, if this seems to them to be expedient pending its passage through Parliament.

It is right to notice that 33 & 34 Vict. c. 1, gave power to the Select Committee of either House of Parliament, to whom bills confirming provisional orders are referred, to award costs under 28 Vict. c. 28, and to examine witnesses on oath as under 22 Vict. c. 78. It was repealed by 34 & 35 Vict. c. 3, but re-enacted with a slight addition not affecting these orders. That statute is still in force as to costs, but has been repealed as to the power to examine witnesses upon oath by 34 & 35 Vict. c. 83, which gives a general power to any committee to examine witnesses on oath.

The next section provides for the costs of the promoters.

(*h*) See the definition in section 4, *ante*, p. 15.

(*i*) The orders in council were made under 11 & 12 Vict. c. 63, but *quære* whether any were made under any other Act. See further as to such orders, section 339, *post*.

(*k*) This is a new provision which has rendered it incumbent on the Board to inquire strictly into the proceedings taken under the statute to see that all have been correctly taken. Thus they must be satisfied that all the advertisements have been published in the appointed manner, and that all the notices have been duly served.

They require statutory declarations on these points from proper deponents.

It is, however, open to any petitioner to show before the committee that there has been some default in this respect. Whether advantage can be taken of any such defect after the passing of this Act is yet to be decided.

(*l*) Hence it is the practice of the Board to insert in the body of the bill clauses which alter the general law in respect of the district to which any provisional order relates, where the order renders some alteration necessary, or some special privilege, exemption, or requirement expedient. But such provision must arise out of the order or be connected with it. The Local Government Board will not propose extraneous alterations of the law in a confirming Bill.

It may be noticed that though these are public general Acts, by a recent arrangement they are printed with the local Acts in the authorized edition of the statutes.

298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the Costs of provisional orders.

Sect. 298. inquiry preliminary thereto (*a*), as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly (*b*); and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs (*c*).

(*a*) With reference to the costs of the preliminary inquiries previous to the issuing of the provisional order, it is right to refer to the observations of the Master of the Rolls in the case of *Ex parte Morley*, *ante*, p. 348, upon the bill of costs of the solicitor engaged by a local authority. He said:—"These are not parliamentary costs, they are simply costs of obtaining an order from the Board of Trade, and they must be taxed under the ordinary rules applicable to costs. There is a reason for this. In former days, when application had to be made to Parliament, great expenses were incurred in consequence of the necessity of employing parliamentary agents and so on; but on these local inquiries there is no necessity for anything of the kind; you may employ an ordinary solicitor, and the notices may be served in the ordinary way, and no great expenditure is incurred."

(*b*) Hence it will not be necessary for the local authority to obtain in this case the sanction required by 35 & 36 Vict. c. 91, printed in the Appendix.

(*c*) The local authority may obtain this loan from the Public Works Loan Commissioners under section 242, *ante*, p. 278; but it is not probable that the Local Government Board would recommend the loan at the low rate of interest under section 243, *ante*, p. 279.

The section is also an exception to the provisions as to loans contained in section 234, *ante*, p. 271, consequently there is no limit of time for re-payment, unless the Local Government Board can prescribe it when they sanction the loan.

Power of Board to enforce Performance of Duty by defaulting Local Authority.

Proceedings on complaint to Board of default of local authority.

299. Where *complaint* (*a*) is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water (*b*), and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce (*c*), the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, *shall* make an order (*d*) limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of *mandamus* (*e*), or the Local

Government Board may appoint some person to perform such duty, and shall by *order* (*d*) direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench (*f*), and be enforced in the same manner as if the same were an order of such Court (*g*). Sect. 299.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) (*h*) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed.

(*a*) This complaint may come from any person. It should be in writing, upon folio foolscap paper, addressed to the president of the Board under cover addressed to the secretary, and should state, with as much conciseness as practicable, the facts of the case which show the default of the authority, and should offer proof of the complaint.

(*b*) See the provisions of the Public Health (Water) Act, 1878, 41 & 42 Vict. c. 25, s. 3.

(*c*) The complaints are specifically as to the want of a sewer and as to deficiency of water supply. But there is a general charge of default in respect of *any* provision of the Act, and this lets in a wide range of complaints. The Board, upon receipt of the complaint, generally communicate it to the local authority, so as, if possible, to avoid an inquiry and any further action. If no redress is thus obtained, and they deem the matter of sufficient importance to require further proceedings, they cause inquiry to be made by one of their inspectors as explained in sections 293, 296, *ante*.

(*d*) This order is in itself binding and conclusive. See section 295, *ante*, p. 345. It must be directed to and served upon the defaulting authority.

(*e*) Accordingly upon one occasion the Board proceeded in the Queen's Bench Division of the High Court of Justice for a writ of *mandamus* against the corporation of Lincoln, for neglecting to provide proper sewers for their city, and obtained the writ notwithstanding the alternative remedy given by the section.

(*f*) Now the Queen's Bench Division of the High Court of Justice.

(*g*) Under the corresponding enactment in 29 & 30 Vict. c. 90, s. 49, an order was made that "the said authority do its duty, and begin to set about the works for the purpose within one month from the date of this order, and proceed therewith until completion." After the month, the authority having done nothing, a second order was made appointing J. B. to perform the said duty of the authority as he should be directed. It was held that the two orders were justified by the section. *Reg.* v. *Cockerell*, L. R. 6 Q. B. 252; 40 L. J. M. C. 153; 19 W. R. 1133; 35 J. P. 693. It was also held that it was not necessary to provide for the expenses in the latter order.

As to the enforcing of the order, see 1 & 2 Vict. c. 110, s. 18, and the rules of the Supreme Court, Order 41, rule 31, which enables an order against a corporation be enforced by sequestration or attachment. See also the next section.

(*h*) See the next section.

Sect. 300. Further provision for recovery of expenses.

300. Any sum specified in an order (*a*) of the Local Government Board for payment of the *expenses* (*b*) of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority (*c*), and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority (*d*), which rate is in this part of this Act referred to as "*the local rate*." If the defaulting authority *refuses* (*e*) to pay any such sum, with costs, as aforesaid, for a period of *fourteen* days after demand, the Local Government Board may by *order* (*f*) empower any person to levy, by and out of *the local rate*, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board (*g*), be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt.

Any person or persons so empowered shall have the same powers of levying *the local rate*, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a *local rate* to be raised by such authority (*h*); and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the defaulting authority.

(*a*) As to this order, see the last section. See also section 295, *ante*, p. 345, which makes it binding and conclusive.
(*b*) As to the meaning of this word, see section 302, *post*.
(*c*) It is not stated to whom the debt is due, but apparently it will be due to the person executing the works.
(*d*) This rate will be the district rate in the case of an urban sanitary authority, but it is somewhat difficult to say what rate is referred to in the case of a rural sanitary authority.
(*e*) Neglect after demand will doubtless be considered to be a refusal. See *Gully* v. *Smith*, 12 Q. B. D. 121.
(*f*) See section 295, *ante*, p. 345.
(*g*) The Board have an absolute discretion in the matter.
(*h*) See Part VI. of this Act, *ante*. The term *local rate* does not properly apply to any rate levied under this Act by that name, but it is explained in the earlier part of the section.

Power of Board to borrow to defray expenses of

301. The Local Government Board may from time to time certify the amount of *expenses* (*a*) that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of

a defaulting local authority; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred (*b*); and the certificate of the said board shall be conclusive as to all matters to which it relates. Sect. 301. performing duty of defaulting authority.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of *the local rate*, without requiring any other security (*c*); and the Local Government Board, or the person so appointed, may, by any instrument duly executed, charge *the local rate* with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of *the local rate*, and had duly executed an instrument charging the same on *the local rate*.

(*a*) See the explanation of this word in the next section.

(*b*) A question arises whether the loan thus to be raised will be affected by the provisions in section 234, *ante*, p. 271. Some difficulties may occur if this be the result.

(*c*) But they cannot advance at the low rate of interest. See section 243 (2), *ante*, p. 279. As this is a loan which is not premeditated, it can seldom be provided for and notified in the manner required by the Public Works Loans Act, 38 & 39 Vict. c. 89, noticed in the notes to section 242, and set out in the Appendix.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act (*a*). Recovery of principal and interest.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

"Expenses," for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

(*a*) See the last section.

Powers of Board in relation to Local Acts, &c.

Sect. 303. Power to repeal and alter local Acts.

303. The Local Government Board may, on the application of *the local authority of any district* (*a*), by provisional order (*b*), wholly or partially repeal alter (*c*) or amend any local Act, other than an Act for the conservancy of rivers (*d*), which is in force *in any area comprising the whole or part of any such district* (*e*), and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act.

Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority (*f*) shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district.

(*a*) The application comes from the local authority, and not from the commissioners or parties acting under the local Act. No particular formality is required in this application, but the proposal and the object of it should be clearly set forth in writing upon folio foolscap paper. The board recognize an application signed by an official, such as the town clerk of a borough, the clerk of the guardians, or local board.

Remarks upon this section will be found in the judgment of LINDLEY, J., in *Monmouth* (*Mayor, &c., of*) v. *Monmouth* (*Churchwardens of*), 38 L. T. (N.S.) 612. Referring to this section he said, "Nothing can be clearer than that the legislature did not intend by the Public Health Act to interfere with the local Acts. It did give power to the Local Government Board to deal with them by provisional orders; but that was only where they did not confer powers or privileges on any persons or person for their or his pecuniary benefit" (p. 618). Reference may also be made to *Walsall* (*Overseers of*) v. *London and North Western Railway*, cited in the notes to section 207, *ante*, p. 254, and to *The North Eastern Railway Company* v. *Tynemouth* (*Mayor, &c., of*), L. R. 3 Q. B. 723.

(*b*) See section 297, *ante*, p. 347.

(*c*) The law officers of the Crown advised that the corresponding section in 34 & 35 Vict. c. 79, enabled a local Act to be altered in provisions not within the purview of the Sanitary Acts, if it were brought within the operation of the section at all. Several provisional orders have been framed accordingly, and have been confirmed by Parliament. But there is no general power conferred upon the board to alter any local Act which relates to local matters.

(*d*) This appears to signify an Act exclusively provided for the conservancy of a river, so that when the Act provides for the conservancy of a river, and also for other matters, subjects of this Act, application may be made with reference to the latter matters.

(*e*) By these words the provision in previous Acts has been extended. That was confined to a local Act in force in a district co-extensive with the sanitary district. But now a local Act will be brought within the operation of this

section, though it applies to a much larger or a much less area than that of the sanitary district.

(*f*) So that if there be an urban authority consisting of commissioners, and another urban authority consisting of a local board, the Local Government Board may determine which shall have jurisdiction in the area dealt with.

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304. On the application (*a*) of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any provisional order made thereunder, or on the application of any person (*b*) affected by such transfer, the Local Government Board *may* by order (*c*) settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be *provisional* only until it has been confirmed by Parliament (*d*).

Settlement of differences arising out of transfer of powers or property to local authority.

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same (*e*).

(*a*) This should be made in writing, and in the manner already frequently described in these notes.

(*b*) The board have declined to entertain questions of disputed liabilities or disputed accounts between local authorities and contractors and such persons. They have considered that such disputes and questions should be settled in a court of law. It is to be observed that this section does not constitute the board the sole tribunal for any of the disputes to which the section refers. In this respect it differs from the local Act with reference to which the decision was given in *Bexley Local Board* v. *West Kent Sewerage Board*, 9 Q. B. D. 518; 51 L. J. Q. B. 456; 47 L. T. (N.S.) 192; 31 W. R. 119; 46 J. P. 519. In that case the West Kent Sewerage Board was incorporated by a local Act, 38 & 39 Vict. c. clxiii., of which section 93 enacted that if any difference should arise between the board on the one hand and any constituted authority on the other hand, or between any two or more constituted authorities, or between any constituted authority and any parish or person, respecting any assessment of a main sewer rate, or any determination of the board, or any controversy or other matter under the Act, the same should by virtue of the Act stand referred for decision to the Local Government Board, whose decision thereon and with reference to the cost of the reference was to be final and binding. A dispute having arisen between the West Kent Sewerage Board and the Bexley Local Board respecting a claim made by the local board against the sewerage board for compensation for damage done to the highways, &c., of

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the district, the disputants, with the consent of the Local Government Board, stated a case for the opinion of the Queen's Bench Division. But it was held that it was not competent for them to do so, the Local Government Board being by section 93 constituted the tribunal, whose decision on the matter was to be final and binding, and the statement of the case not being a submission to arbitration within the meaning of section 5 of the Common Law Procedure Act, 1854, which applies only to compulsory references under the Act, or to references by consent of parties where the submission is or may be made a rule of court.

(*c*) See as to this order, section 295, *ante*, p. 345.

(*d*) See section 297, *ante*, p. 345, and section 323, *post*, for other orders of adjustment.

(*e*) That is, for example, in an order constituting a local government district out of a rural district, or in an order altering a local Act.

PART X.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

Miscellaneous.

Sect. 305. Entry on lands for purposes of Act.

305. Whenever it becomes necessary for a *local authority* or any of their officers to enter examine or lay open any lands or premises for the purpose (*a*) of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (*b*), and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice (*c*) to such owner or occupier, apply to *a court of summary jurisdiction* (*d*) for an order authorizing the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them (*e*).

If no sufficient cause is shown against the application the court may make an order accordingly (*f*), and on such order being made the local authority or any of their officers (*g*) may, at all reasonable times between the hours of *nine* in the forenoon and *six* in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency (*h*), no entry shall be made or works commenced under this section unless at least *twenty-four hours notice* of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

(*a*) Care must be taken not to claim an entrance for any purpose not specified here. An entrance for the purpose of examining drains and privies, as to nuisances, and as to unsound meat, &c., can be obtained under sections 41, 102, and 119, *ante*. See also the power of entry given by section 84 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), which may be incorporated herewith by provisional order; and the provision in the next section for the admission of the owner by the occupier to execute works. See also note (*e*), *infra*.

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(*b*) It does not appear that the local authority have any power to fix boundaries, but the power to enter to ascertain boundaries may perhaps be exercised for the purposes of section 272, *ante*, p. 327.

(*c*) As to the authentication and service of this notice, see sections 266, 267, *ante*, pp. 314, 315.

(*d*) See the definition in section 4, *ante*, p. 16. Previous to the making of the order the party must be summoned to appear before the justices, though the Form F. in Schedule IV. does not recite any summons. As to the removal of such an order by *certiorari*, see section 262, *ante*, p. 302, and the notes to that section. It is doubtful whether the order would be any protection to persons attempting to act under it if the provisions of this section be not duly complied with.

(*e*) This section does not enable a local authority to obtain an order in the case of an owner's refusal to permit an entry for the purpose of proceedings taken under section 16, *ante*, p. 30, to lay a sewer through private lands. *Lamacraft* v. *St. Thomas Rural Sanitary Authority*, 42 L. T. (N.S.) 365; 44 J. P. 441.

(*f*) Justices have no power to state a case in refusing to make such an order. There is no determination of a complaint within 20 & 21 Vict. c. 43, s. 2, the power of the justices to make the order being discretionary. *Diss Urban Sanitary Authority* v. *Aldrich*, 2 Q. B. D. 179; 46 L. J. M. C. 183; 36 L. T. (N.S.) 663; 41 J. P. 549. But if they made the order and any question were raised as to its being in excess of jurisdiction, it would seem that a case might be stated under the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 33.

(*g*) The officer should be provided with some authority from the board and his means of proving it.

(*h*) The person who enters must determine at his peril whether the case be one of emergency. Therefore, it will be the safest course to give this notice, unless the emergency be very clear.

Penalty on obstructing execution of Act.

306. Any person who wilfully obstructs any member of the local authority, or any person duly employed in the execution of this Act, or who destroys pulls down injures or defaces any board (*a*) on which any bye-law notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board (*b*) or of the local authority, be liable for every such offence to a penalty not exceeding *five* pounds (*c*).

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by *order in writing* (*d*), require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the *making* (*e*) of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding *five* pounds for every day during the continuance of such non-compliance (*f*).

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or

wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding *five pounds* (*f*). Sect. 306.

(*a*) See the next section.

(*b*) Notice as to inquiries are here referred to which the Local Government Board direct to be put up.

(*c*) As to the recovery of this penalty, see section 251, *ante*, p. 289. It is to be observed that the definition of a court of summary jurisdiction in this Act (*ante*, p. 16), differs from that in the Act of 1848 (11 & 12 Vict. c. 63, s. 2). It is not necessary, therefore, that the justices should be acting for the petty sessional division in which the matter of complaint arises. See *Reg.* v. *Brodhurst*, 27 J. P. 580.

The defendant is not necessarily entitled to have the case dismissed because the obstruction took place in assertion of a claim of right. Nor are justices for that reason alone justified in refusing as frivolous an application for a special case. *Reg.* v. *Pollard*, 14 L. T. (N.S.) 599.

(*d*) See the Form E. in Schedule IV., *post*, which recites the issue of a summons to the party complained of, and his failure to show sufficient cause against the order.

(*e*) In 18 & 19 Vict. c. 121, s. 37, the word *service* was substituted for the word *making* in 11 & 12 Vict. c. 63, s. 16. It is, perhaps, to be regretted that there has been this change. The order may be made in the absence of the occupier or without his knowledge, and the time may run from an Act of which he knows nothing, whereas he could not have pleaded ignorance of the service.

(*f*) See as to the recovery of this penalty, section 251, *ante*, p. 289.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act (*a*), be liable to a penalty not exceeding *five* pounds (*b*). Penalty on damaging works, &c., of local authority.

(*a*) See section 60, *ante*, p. 70, and the last section. It is presumed that the offender may also be punished under the Malicious Injuries to Property Act, 24 & 25 Vict. c. 97, ss. 52, 53.

(*b*) See, as to the recovery of this penalty, section 251, *ante*, p. 289.

308. Where any person sustains any damage (*a*) by reason of *the exercise of any of the powers of this Act* (*b*), in relation to any matter *as to which he is not himself in default* (*c*), full compensation shall be made to such person by the local authority exercising such powers (*d*); and any dispute as to the *fact of damage* or amount of compensation (*e*) shall be settled by *arbitration* in manner provided by this Act (*f*), or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party (*g*) be ascertained by and recovered before a *court of summary jurisdiction* (*h*). Compensation in case of damage by local authority.

(*a*) In *Herring* v. *The Metropolitan Board of Works*, *infra*, a point was raised as to the kind of damage which could be recovered under the cor-

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responding section of the Metropolis Management Act. It was not necessary to decide the case on this point, but SMITH, J., expressed an opinion that the section was confined to something like actual damage to land. It has since been held that the principle of the decision in *Ricket* v. *The Metropolitan Railway Company*, *infra*, is that in order to entitle a claimant to compensation under section 68 of the Lands Clauses Consolidation Act, injury must be done to land or some interest in land, and that a mere personal injury, though connected with the enjoyment of particular land, is not ground for compensation. *Reg.* v. *Metropolitan Board of Works*, L. R. 4 Q. B. 358; 17 W. R. 1094; 33 J. P. 710. And see *The Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. 243; 43 L. J. C. P. 385; 31 L. T. (N.S.) 182; 23 W. R. 115. The language of section 68 of the Lands Clauses Act, however, differs materially from that used in the present section.

The damage is referred to in the text in very general terms, and appears to include every kind of loss caused by the action of the authority, though it only applies to such damage when the act is required to excuse or justify it. See *Broadbent* v. *Imperial Gas Company*, 3 Jur. (N.S.) 221; 26 L. J. Ch. 276; *Southampton and Itchin Bridge Company* v. *Southampton Local Board*, *ante*, p. 308. "Acts which give to parties injured a right of compensation must be taken to mean that while they take away from the owners of property the right to bring actions, they provide that parties injured by the exercise of those powers shall not be damnified by being deprived of their right of action; and, correlatively, that such persons shall have no right to compensation unless the injury which they have sustained by the exercise of the powers is such as would, but for the provisions of the Acts, have been actionable." Per COCKBURN, C. J., in *New River Company* v. *Johnson*, 2 E. & E. 435, 442; 29 L. J. M. C. 93; 24 Jur. 374; 8 W. R. 179; 24 J. P. 244. And it was held by the House of Lords that unless an injury occasioned by the act of a public company would have been the subject of a claim for damages before the company obtained statutory powers to do that which occasioned the injury, it could not, except it were expressly so provided, be a subject for compensation when occasioned by something done in the exercise of those powers. *Ricket* v. *Metropolitan Railway Company*, L. R. 2 H. L. 175; 36 L. J. Q. B. 204; 16 L. T. (N.S.) 542; 15 W. R. 937. And see *Herring* v. *The Metropolitan Board of Works*, 34 L. J. M. C. 224. There for the purpose of making a sewer the defendants had erected a hoarding in a street which rendered the access to the plaintiff's premises less convenient than before, but no part of the plaintiff's premises was taken, nor did it appear that the hoarding was kept up beyond a reasonable time. It was held that the plaintiff was not entitled to compensation for the damage sustained by the erection of this hoarding, for such an obstruction might lawfully have been made by a private person, and *a fortiori* might be made by a public body in the discharge of its duties.

This principle was further illustrated in *Hall* v. *Bristol* (*Mayor of*), L. R. 2 C. P. 322; 36 L. J. C. P. 110; 15 L. T. (N.S.) 572; 15 W. R. 404; 31 J. P. 376. That was an action on an award of compensation for damage caused by the making of a sewer. The judge, BLACKBURN, J., left it to the jury to say whether the making of the sewer caused the plaintiff's land to give way independently of the weight put upon it during the last twenty years, and told them that if they thought the damage would not have been caused unless the extra weight had been put upon it, they ought to find for the defendants. It was held that the direction was right, for compensation could not be claimed for any damage which would not have been actionable if the local board had not been acting under the authority of the Act. And see *Rhodes* v. *Airedale Drainage Commissioners*, 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. (N.S.) 46; 24 W. R. 1053.

A local board gave notice to pave and level a street under the section of the Act of 1848 corresponding to section 150, *ante*, p. 152. In default of the owner they did the work themselves, and in so doing they altered the level of

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the street so that the access to a house was rendered difficult and dangerous. It was held that though the owner might be liable to pay his proportion of the expenses, he was entitled to compensation for the special damage he had sustained. *Reg.* v. *Wallasey Local Board*, L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 17 W. R. 766; 33 J. P. 677; 21 L. T. (N.S.) 90; 10 B. & S. 428. Where the footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees so as to raise the level of the footpath in front of the house of the plaintiff and cause him damage, it was held that the street was not by reason of its being a turnpike road excluded by the interpretation clause from the operation of the section giving the board power to alter the street; and that as they were exercising the powers given by the Act, the plaintiff was entitled to compensation. *Nutter* v. *Accrington Local Board*, 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. (N.S.) 802; 43 J. P. 635. BRAMWELL, L. J., dissented from this decision, holding that as the board had all the powers of the turnpike trustees to alter the level of the road, and as no action would lie against the trustees, the principle of *Boulton* v. *Crowther*, *infra*, was applicable, being apparently of opinion that the raising of the road was done in exercise of powers other than those created by the Act. This view was adopted in a subsequent case, where there had been a subsidence of a road in front of certain houses and the houses also had subsided, the local board raised the road to its original level. It was held that the owners of the houses could not claim compensation, as the work was not done by reason of "the exercise of any of the powers of the Act" within the meaning of this section. These words the court held to apply to powers created by the Act, and not simply to powers transferred by section 144 from the surveyor to the board; and as the raising of the roads was done by the board either in pursuance of their duty as surveyors of highways, or in exercise of such powers as surveyors have, the owners of the houses were not entitled to compensation. *Burgess* v. *Northwich Local Board*, 6 Q. B. D. 264; 50 L. J. Q. B. 219; 44 L. T. (N.S.) 154; 29 W. R. 931; 45 J. P. 256.

(*b*) In illustration of the words "the exercise of any of the powers of this Act," reference may be made to the cases cited in the notes to section 264, *ante*, p. 304.

With reference to the principles of valuing land for compensation, see *Mordue* v. *Durham* (*Dean and Chapter of*), L. R. 8 C. P. 336; 42 L. J. C. P. 114; 28 L. T. (N.S.) 593; and in regard to mines, *Jacomb* v. *Corporation of Huddersfield*, *post*, p. 362, and *Great Western Railway Company* v. *Smith*, 2 Ch. D. 235; 45 L. J. Ch. 235; 34 L. T. (N.S.) 267; 24 W. R. 443.

The cases cited in the preceding note show that the damage is limited to acts done in pursuance of powers given by this Act, which the provisions of this Act are necessary to justify. But where an act is done by a public body in pursuance of powers given to them by statute, no *action* lies against them at the suit of a private individual for injuries sustained by him by reason of the exercise of these powers. *Bolton* v. *Crowther*, 2 B. & C. 703. Therefore it was held that no *action* would lie against a local board for damage caused by the lowering of the soil of a street under the section corresponding to section 149, *ante*, p. 146. *Bold* v. *Williams*, 21 J. P. 84. If, however, the damage is caused by negligence in the exercise of the statutory powers, an action lies. Thus where by the construction of a sewer an ornamental pond and rivulet in the plaintiff's grounds were drained, it was held that the board constructing the sewer could not be restrained by injunction, as they had not exceeded their statutory rights. It was also held that if the injury had been caused by the unskilful or improper construction of the sewer, the court would have interfered to prevent it, but that as this was not the case, the rights of the plaintiffs were limited to a claim for compensation. *Stainton* v. *Woolrych*, 23 Beav. 225; 26 L. J. Ch. 300. "The distinction is clearly established between damage from works authorized by statutes, where the party generally is to have compensation and the authority is a bar to an action, and damage

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by reason of the work being negligently done, as to which the owner's remedy by action remains." Per CROMPTON, J., in *Brine* v. *Great Western Railway Company*, 2 B. & S. 402, 411; 31 L. J. Q. B. 101; 8 Jur. (N.S.) 410; 6 L. T. (N.S.) 50; 10 W. R. 341; 26 J. P. 516. This distinction was followed in *Clothier* v. *Webster*, 6 L. T. (N.S.) 461. There the court held that where damage was caused by the *negligent* laying of a sewer, the owner of the property damaged might bring his action, and was not put to his claim for compensation. And see *Hall* v. *Batley* (*Corporation of*), 47 L. J. Q. B. 148. The dictum of CROMPTON, J., *supra*, was also adopted by the House of Lords in *The Mersey Docks* v. *Gibbs*, L. R. 1 H. L. 93, 112; 14 W. R. 872; 30 J. P. 467; 35 L. J. Ex. 225. And see *Coe* v. *Wise*, L. R. 1 Q. B. 711; 37 L. J. Q. B. 262; 7 B. & S. 831; 14 W. R. 865; 30 J. P. 484.

When the damage is caused by work, the doing of which is not authorized by the section, the remedy is by action, and not by a claim for compensation under this section. *Reg.* v. *Darlington Local Board*, 6 B. & S. 562; 33 L. J. Q. B. 305; 13 W. R. 789; 29 J. P. 419.

When a local board interfered with a watercourse in a manner not authorized by 21 & 22 Vict. c. 98, s. 68, sub-sect. (3), corresponding to section 327, sub-section (4), *post*, it was held that they might be restrained from so doing, and that the person injured would not be left to his remedy for compensation only. *Grand Junction Canal Company* v. *Shugar*, L. R. 6 Ch. 483; 24 L. T. (N.S.) 402; 19 W. R. 569.

The fact that a claim for compensation has been made under this section will not estop the plaintiff from obtaining relief by injunction or damages, if he is in law entitled to bring an action for such relief. *Pentney* v. *Lynn Paving Commissioners*, 12 L. T. (N.S.) 818.

(*c*) These words are new. They qualify the claim, but apparently apply to those cases where, owing to the default of the owner of the house or land, the sanitary authority are compelled to interfere with his property.

(*d*) In ascertaining the proper amount of damage in respect of the making of a sewer, an arbitrator took into consideration the impossibility of building over it, the possible defective construction of it, and the annoyance likely to arise from the opening of manholes and from stenches caused thereby. These were all held to be legitimate objects of consideration. *Uttley* v. *Todmorden Local Board*, 44 L. J. C. P. 19; 31 L. T. (N.S.) 445; 39 J. P. 56.

Prospective damage, as well as actual injury, must be taken into consideration. Per BRETT, L. J., in *Re Dudley*, *infra*.

Where a corporation were under a local Act empowered to make a conduit for water through a field at some distance below the surface, it was held that it was not necessary for them to make compensation for damage by severance of minerals when they were not required by the Waterworks Clauses Act, 1847, to purchase them. *In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92; 44 L. J. Ch. 96; 31 L. T. (N.S.) 466; 23 W. R. 100. See with reference to the purchase of minerals the Public Health (Support of Sewers) Act, 1883, *post*.

Where a local authority constructed a sewer under a public footpath, the soil of which belonged to the plaintiff, and made a shaft thirty feet deep into the sewer, with an entrance or manhole upon the footpath at a point where there was a junction of two sewers, it was held that the local authority were justified in so doing, a manhole being part of the sewer, and that the plaintiff's remedy was compensation under this section. *Swanston* v. *Twickenham Local Board*, 11 Ch. D. 838; 48 L. J. Ch. 623; 40 L. T. (N.S.) 734; 27 W. R. 924.

It seems from the judgment of JESSEL, M. R., in *Taylor* v. *Oldham* (*Corporation of*), 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. (N.S.) 696; 25 W. R. 178, that if a local authority lay a sewer in a private street, their so doing amounts to a compulsory taking of that part of the subsoil occupied by the sewer, and that they are bound to compensate the owner of the soil. It follows also from the remarks of the same judge in *Roderick* v. *Aston Local*

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Board, 5 Ch. D. 328, 333; 46 L. J. Ch. 802; 36 L. T. (N.S.) 170, 328; 25 W. R. 403, that this section would include a claim for compensation for lateral support to a sewer. In a subsequent case it was held the Act imposed upon landowners through whose land a sewer was laid an obligation to preserve to such sewer a subjacent support, and gave them a right to immediate compensation for being deprived of free power to work subjacent mines, but not for the risk of percolation of sewage into the subjacent mines, as such percolation could only be caused by wrongful working of the mine. *In re Corporation of Dudley*, 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. These decisions as to support have, however, been considerably affected by the Public Health (Support of Sewers) Act, 1883, *post*. The Gasworks Clauses Act, 1847, gives a gas company incorporated under it a right of support for their pipes, and a correlative right of compensation to the landowner for the burden thus cast upon him and for the limitation thus put upon the uses of his land.

Where a private Act provided that all houses for slaughtering horses within a certain distance of a workhouse should be deemed public nuisances and removed, provided, however, that if they existed before the Act the owners were to be entitled to compensation, it was held that a defendant might be indicted at common law if his house was so conducted as to be a public nuisance apart from the Act, and that in such case he would not be entited to any compensation. *R.* v. *Watts*, 2 C. & P. 486.

It would seem that the local authority are not bound to make or tender compensation *before* doing an act which will have the effect of causing damage. See *Lister* v. *Lobley*, 7 A. & E. 124.

Quære whether there is any limitation of the time within which a claim must be made under this section. See *Pettiward* v. *Metropolitan Board of Works*, 19 C. B. (N.S.) 489; 34 L. J. C. P. 301. The limitation in section 264, *ante*, p. 303, has been held not to apply. See *Delaney* v. *Metropolitan Board of Works* in the notes to that section.

(*e*) The local board of S. made a sewer through the land of B., who claimed compensation. The board maintained that the land was not damaged, and consequently that B. was not entitled to any compensation. B. called upon them to appoint an arbitrator under the section of the Public Health Act which corresponds with section 180, *ante*, p. 210. The board refused to do so. B. appointed an arbitrator, who ultimately made an award *ex parte*. On motion to set aside this award it was held that as the local board had made the sewer and were liable to make compensation if there was any damage, the dispute was only as to the amount of compensation, which the arbitrators might have assessed at nothing. *Bradley* v. *Southampton Local Board*, 4 E. & B. 1014; 24 L. J. Q. B. 239; 3 W. R. 413; 3 C. L. R. 771; 19 J. P. 644; 1 Jur. (N.S.) 778. It was assumed by the court that had there been a question of liability, the proceedings by arbitration would not have been valid. In *Bradford Local Board* v. *Hopwood*, 6 W. R. 818, however, WOOD, V.-C., refused to restrain a claimant from proceeding by arbitration, the motion for the injunction being founded on the allegation that there was a dispute as to liability, and not merely as to the amount of compensation. In a subsequent case the ground of the decision was that an arbitrator appointed under this section would have had no jurisdiction to make an award if the liability, as distinguished from the amount of the compensation, was in dispute. *Reg.* v. *Burslem Local Board*, 1 E. & E. 1077; 28 L. J. Q. B. 345; 24 Jur. 696; 8 W. R. 584; 24 J. P. 563.

These cases were much discussed in *Pearsall* v. *The Brierley Hill Local Board*, 11 Q. B. D. 735; 52 L. J. Q. B. 529; 49 L. T. (N.S.) 486; 32 W. R. 141; 47 J. P. 628 (since affirmed in the House of Lords), which, if it does not overrule the previous decisions, at least decides that they are not to be taken as applicable to the construction of this section. There the Court of Appeal decided that a person who claims compensation for damage sustained by reason of the exercise of the powers of the Act is entitled under section 308 to

Note to Sect. 308.

have the amount of compensation determined by arbitration in the manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration to settle the question of amount. It would seem, therefore, that if the local authority dispute the liability, they ought to refuse to fulfil the award and leave the claimant to his action on the award. See *Walker* v. *Beckenham Local Board*, 48 J. P. 264.

(*f*) See section 179, *ante*, p. 209.

(*g*) This statement of the option is new. It is not quite clear how it is to be determined. The local authority will not seek to recover the amount, and if the claimant decline to go before the justices, it is difficult to see how he can be compelled to do so, but if he select that court the local authority must follow.

(*h*) See section 251, *ante*, p. 289.

Compensation in certain cases to officers.

309. If any officer of any trustees commissioners or other body of persons intrusted with the execution of any *local Acts*, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts (*a*), or any officer of any sanitary authority under the Sanitary Acts (*b*) by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts (*c*), removed from his office, or deprived of the whole or part of the *emoluments* (*d*) of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may by order award to such officer such compensation as the said board may think just (*e*); and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.

(*a*) See the definition in Schedule V., Part I., *post*.

(*b*) See the definition in section 4, *ante*, p. 15.

(*c*) See section 303, *ante*, p. 354.

(*d*) As to what are emoluments, see *Reg.* v. *Norwich Corporation of*, 8 A. & E. 633; *Reg.* v. *Local Government Board*, L. R. 6 Q. B. 785; 41 L. J. M. C. 16; 25 L. T. (N.S.) 304; *Reg.* v. *Local Government Board*, L. R. 9 Q. B. 148; 43 L. J. Q. B. 49; 29 L. T. (N.S.) 769; 22 W. R. 315; 38 J. P. 165; *Reg.* v. *Postmaster-General*, 3 Q. B. D. 428; 47 L. J. Q. B. 435; 38 L. T. (N.S.) 89; 26 W. R. 322.

(*e*) As to awards of compensation by the Local Government Board, see *Reg.* v. *Local Government Board*, *supra*. The words of the section appear to give that board a discretion as to whether they will grant any compensation, but it would seem from the case just cited that the officer is entitled to compensation.

In fixing the amount of compensation the board do not look to the strict legal tenure of office, but to the reasonable expectation of its duration. Most of the officers appointed under the Public Health Act, 1848, hold at the dis-

cretion of the local board, nevertheless the board consider them, as a general rule, officers entitled to compensation for a reasonable term. Note to Sect. 309.

Whether an order under this section can be questioned is doubted, regard being had to section 295, *ante*, p. 345.

310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners (*a*), or district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament (*b*), within or for the benefit of such district or part of a district, shall pass to and be exerciseable by and vested in the council of such borough (*c*). Provision where improvement Act district or local government district becomes a borough.

The transfer by virtue of the Public Health Act, 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such local board or improvement commissioners *as a burial board* under any general Act of Parliament (*d*).

(*a*) See the definition in section 4, *ante*, p. 4.

(*b*) Do these words carry powers other than sanitary powers possessed by these commissioners? The point is doubtful, and should be cleared up by the Act constituting the borough if there be one, or by the Act extending the borough boundaries. Where the borough is created by charter the point will remain open.

(*c*) The words "council of such borough" mean the mayor, aldermen and burgesses acting by the council. The effect of the section, therefore, is that, when the district is incorporated as a borough, all the property of the board (including property acquired by them by purchase after the passing of the Act) vests at once in the corporation without the necessity of any conveyance or transfer. In such a case the Bank of England are bound, on the request of the corporation, to register in their corporate name government stock previously standing in the book of the bank in the name of the local board, without requiring any transfer to be executed. *Hyde* (*Corporation of*) v. *Bank of England*, 21 Ch. D. 176; 51 L. J. Ch. 747; 46 L. T. (N.S.) 910; 30 W. R. 790.

(*d*) This is a provision which was omitted in 35 & 36 Vict. c. 75, s. 7. See 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V., Part III., *post*.

311. *Any local board* constituted either before or after the passing of this Act *may*, with the sanction of the Local Government Board, *change their name*. Every such change of name shall be published in such manner as the Local Government Board may direct. No Power of local boards to change name.

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such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name.

See as to the name of the local board section 7, *ante*, p. 19. The Local Government Board have required the local board to pass a precise resolution reciting the necessity for the change, and to send a copy to them. They have given their sanction under seal, and have required the change to be published in the *London Gazette*, and in the local newspapers.

A change of name will cause, in old-established boards, much inconvenience, and should not be adopted without serious necessity.

In some provisional orders, provision has been made for a change of the name of the local board.

As to election of certain improvement commissioners, &c.

312. The retirement and mode of election of members of any authority invested by any local Act with *powers of town government* and rating (*a*), whose *retirement and mode of election* were at the time of the passing of this Act regulated by the Local Government Acts (*b*), shall be regulated in all respects by the rules for election of local boards contained in Schedule II. to this Act; but this enactment shall not affect the *qualification* fixed for members of such authority by the local Act under which such authority are constituted, or the *qualification* and *tenure* of office of any *ex officio* members of such authority.

(*a*) See the definition of improvement commissioners in section 4, *ante*, p. 4. This section applies to the commissioners who have adopted 21 & 22 Vict. c. 98, to those who had been brought under the operation of 11 & 12 Vict. c. 63, and to those who had been brought under the Local Government Acts by some special local Act.

(*b*) See the definition of this term in Schedule V., Part I., *post*. Many local Acts have been passed which have required the election of commissioners to be according to the provisions of the Public Health Act, 1848, or the Local Government Act, 1858. In some cases the provisions of the Sanitary Acts had been adopted by the parties, in others they had been imposed upon districts by express statutory provision in local Acts.

Section 339, *post*, provides for the qualification in boards under the Sanitary Acts.

Substitution in other Acts of provisions of this Act for provisions of repealed Acts.

313. Where in any Act, or order made by one of Her Majesty's principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts (*a*) which are repealed by this Act are mentioned or referred to, such Act order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed pro-

visions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act order or document expressed in relation to the repealed provisions therein mentioned or referred to. Sect. 313.

(*a*) See the definition in section 4, *ante*, p. 15, and section 323, *post*.

314. Any *local* authority may, if they think fit, make *bye-laws* for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority. Bye-laws as to hop-pickers.

See section 182, *ante*, p. 215, as to the making of bye-laws, and section 251, *ante*, p. 289, as to enforcing them.

Bye-laws upon this subject will be made chiefly if not entirely by rural sanitary authorities. Model bye-laws under this section have been issued by the Local Government board.

315. Any bye-law made by any sanitary authority under the Sanitary Acts (*a*) which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed (*b*). As to bye-laws inconsistent with this Act.

(*a*) See the definition in section 4, *ante*, p. 15.

(*b*) See section 326, *post*, as to bye-laws made by sanitary authorities before the passing of this Act.

This section doubtless applies to bye-laws made under local Acts which incorporate any of the Sanitary Acts as well as to those made under these Acts.

316. In the construction of the provisions of any Act incorporated with this Act the term (*a*) "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any *order* (*b*) confirmed by Parliament and authorizing the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be. As to construction of incorporated Acts.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act (*c*).

(*a*) These terms are found in such incorporated Acts as the Lands Clauses Act, the Waterworks Clauses Act, the Markets and Fairs Clauses Act, &c. All the incorporated statutes will be found in the Appendix.

(*b*) It would have been more correct to say any Act confirming an order.

Note to Sect. 316.

(*c*) See sections 251–4, *ante*, pp. 289–293.

This provision creates some difficulty. It will be remembered that section 253, *ante*, p. 292, provides that no proceedings are to be taken to recover penalties except by a party aggrieved, by the local authority, or by a person having the consent of the Attorney-General. In some cases arising under incorporated Acts the police are authorized by such Acts to arrest offenders and take them before justices. See for example the Towns Police Clauses Act, 10 & 11 Vict. c. 89, s. 28. It may be doubted whether the power to arrest requires any authority of the local board; but *quære* whether the police can proceed by summons against offenders under such an incorporated statute, except by virtue of an authority under section 253. It is submitted that they cannot.

Construction of schedules.

317. The schedules to this Act shall be read and have effect as part of this Act.

The forms contained in Schedule IV. to this Act, or forms *to the like effect*, varied as circumstances may require, may be used and shall be sufficient for all purposes.

Temporary Provisions.

As to clerk and treasurer of certain authorities.

318. *Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section twelve of the Public Health Act*, 1872.

This section has been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

As to special district rates.

319. Nothing in this Act shall affect the making and levying of any *special district rates*, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act.

Special district rates were authorized by 11 & 12 Vict. c. 63, s. 86, but the making of them for the future was prohibited by 21 & 22 Vict. c. 98, s. 54. As, however, charges upon them had in some cases been created under the former Act, such charges had still to be provided for by the levying of such rates. The 24 & 25 Vict. c. 61, s. 12, enabled the special district rate to be levied as part of the general district rate when the areas of the two rates were the same; and section 13 provided for the payment of such rates when made for a part of the district only out of the general district rate with the consent of the creditors and of the owners and ratepayers by means of a fresh loan. These charges are, however, extinguished in all or nearly in all cases.

Division of expenses between landlord and tenant

320. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act, 1872, divided

between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application either of landlord or tenant, by order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act. Sect. 320. In certain cases.

The provisions of this section apply only to provisions in a few local Acts relating to boroughs. The section is somewhat troublesome, as it requires a separate order for every case. The Local Government Board require the application to be in writing on folio foolscap paper. The applicant is not likely to be the landlord, and therefore the tenant has been required to give his landlord's name and address, the term of his lease, and the amount of his rent. The board will not make an order *ex parte*. This section can hardly be applicable to many cases at this date.

321. Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited. Validity of certain securities.

See the definition of Sanitary Acts in section 4, *ante*, p. 15. It does not appear that any court of law has decided that when a statute requires a loan to be liquidated within a certain time, it is not lawful to make it repayable within a shorter period, It is doubtful whether any court would so decide. But opinions have been given by counsel of repute to that effect, and this section is framed to meet that opinion, and to remove the objection if it should be raised.

322. Where by any local Act powers are conferred on any *turnpike trustees* for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained. As to certain turnpike trustees.

This section might perhaps have been appropriately appended to section 6, *ante*, p. 17. It deals with a very special and unusual case, which was provided for by 37 & 38 Vict. c. 89, s. 3, and the transfer took effect under that Act.

323. Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for *the purposes of main sewerage only* (*a*), or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act, 1867 (*b*), the Local Government Board may, by provisional order (*c*) dissolve such district, or may As to main sewerage districts and joint sewerage boards. 11 & 12 Vict. c. 63.

Sect. 323. constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such order (*d*); and until an order has been made by the Local Government Board under this section, the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed: Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts (*e*) which are in force within the district of any such authority at the time of the passing of this Act and are repealed by this Act shall be deemed to be substituted for those enactments (*f*).

Any order (*g*) made under this section may if necessary provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts, parishes, or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

(*a*) In 11 & 12 Vict. c. 63, s. 10, reference was made to a district formed for the purposes of main sewerage. No other statutory provision was made for such a district, and it does not appear how the district was to be formed, constituted, regulated, or provided with funds. The general board of health did, however, form one or two such districts, and their existence was recognized in 37 & 38 Vict. c. 89, s. 57.

(*b*) The Act referred to is 30 & 31 Vict. c. 113, ss. 10—14. It is now repealed, but the provisions of it relating to the formation of joint sewerage boards are practically re-enacted in sections 279—84, *ante*, pp. 334—6.

(*c*) See section 297, *ante*, p. 347, as to provisional orders.

(*d*) A united district is formed under section 279, *ante*, p. 334; under that section, however, the board must be applied to before they can constitute the united district, while under this section they can act *ex mero motu*.

(*e*) See the definition in section 4, *ante*, p. 15.

(*f*) See further, section 313, *ante*, p. 366.

(*g*) See section 275, *ante*, p. 331, and section 304, *ante*, p. 355. This order is not provisional, but according to section 295, *ante*, p. 345, is final and conclusive.

As to audit of certain accounts.

324. *The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed, not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act.*

As to certain orders under section 20 of 35 & 36 Vict. c. 79.

325. *The power conferred by section* 20 *of "The Public Health Act*, 1872," *of temporarily constituting a port sanitary authority, shall be deemed to have authorized a renewal from time to time of any order made under that section.*

This and the preceding section have been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

Saving Clauses.

Sect. 326. Provision as to the sanitary authorities existing at the passing of this Act, and their officers, &c.

326. All urban sanitary authorities and rural sanitary authorities *existing* (*a*) at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act (*b*); and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts (*c*), and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts *under this Act;* and the *members* of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) (*d*) for such time as they would respectively have held office if this Act had not been passed; and the *officers* and *servants* of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions, as to duties, remuneration, and otherwise, as they would have held them if this Act had not been passed (*e*); and all *bye-laws* duly made under any of the Sanitary Acts (*c*) by this Act repealed, and not inconsistent with any of the provisions of this Act, shall be deemed to be bye-laws under this Act (*f*); and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts (*c*) by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts (*c*), or any of them, before the passing of this Act, and existing at the time of the passing of this Act (*g*).

(*a*) They are assumed to be legally constituted, but the section does not in itself confer legality on the acting bodies.

(*b*) Consequently they would be able to execute all the powers and be subject to all the duties provided by the Act; but the last part of the section enacts the proposition in terms.

Note to Sect. 326.

(*c*) See the definition in section 4, *ante*, p. 15.
(*d*) See these provisions in Schedule II. rules 59, 73, *post*.
(*e*) See also section 318, *ante*, p. 368.
(*f*) See sections 182, *ante*, p. 215; and 251, *ante*, p. 289.
(*g*) See section 343, *post*.

Saving for works and property of certain authorities, and for navigation and water rights, &c.

327. Nothing in this Act (*a*) shall be construed to authorize any local authority—

(1.) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (*b*); or

(2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being; or

(3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof (*c*), in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or

(4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference (*d*); or

(5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorized by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or

(6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,— Sect. 327.

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are herein-before in that behalf respectively mentioned, *such consent to be expressed in writing* (*e*), in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorized officer or agent (*f*). And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

(*a*) The effect of this and the following sections is apparently to prohibit the local authority from acting, without the necessary consent, in the matters prohibited, even although they may be prepared to pay due compensation under section 308, *ante*, p. 350. But it would also appear that with regard to some at least of the matters referred to in the section, a provisional order may be made by the Local Government Board (see section 176, *ante*, p. 205); and if such order be confirmed by Parliament it will supersede these provisions.

(*b*) It will be remembered that by section 13, *ante*, p. 27, such sewers do not vest in the local authority as other sewers do.

(*c*) There is no exception of public navigable rivers or the sea-shore. The local authority cannot disturb any private interest therein, but even if they avoid all such disturbance they may still be prevented from doing any act which will interfere with the rights of the Crown. The Board of Trade or the Admiralty must be consulted with reference to the sea-shore and harbours.

It must be remarked that the text does not refer to pollution, but to interference with navigation. Reference should be made to section 17, *ante*, p. 31, and the notes thereon, as to the pollution of streams by sewage. See also the Rivers Pollution Act, 1876, in the Appendix.

In *Reg.* v. *Bradford Navigation, Proprietors of*, 34 L. J. Q. B. 191; 11 Jur. 766; 29 J. P. 613, the Court of Queen's Bench laid down this principle that statutory powers, though framed for the public benefit, are only co-extensive with the power to exercise them without an infringement of the general law. Where the exercise is not compulsory on the grantees, and new and unforeseen circumstances subsequently arise which render the exercise of them a nuisance, such exercise of them is unlawful. Hence, when a navigation company were empowered by statute to take water from certain streams for the supply of their canal, and the streams became polluted so that the water of the canal caused a public nuisance, it was held that the lessees of the company were properly convicted on indictment. This decision was supported by Wood, V. C., who granted an injunction against the lessees and the company who owned the canal, to prevent them from drawing the polluted water from the streams into the canal, though he granted some time to enable the defen-

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dants to provide a remedy if possible. *Attorney-General* v. *Proprietors of the Bradford Canal*, L. R. 2 Eq. 71; 35 L. J. Ch. 619; 14 L. T. (N.S.) 248; 14 W. R. 579.

(*d*) The words *injuriously affect* may possibly include pollution as well as diminution in quantity.

A local board cannot, under cover of legislative powers, make a sewer which will have the effect of polluting the water of a canal: held, therefore, that the board must be restrained from permitting sewage communication to be made between the adjoining houses and the main sewer so long as it should discharge into the canal. Power given to a canal company by their Act to supply the canal with water from all brooks, streams, and watercourses within 1,000 yards of the canal, does not so far comprise rain and other surface water which, being collected on the road, ran along an open gutter into the canal, as to preclude the local board from allowing it to fall through gratings into a sewer which they had made under the road for the drainage of their district. *Manchester, Sheffield and Lincolnshire Railway Company* v. *Worksop Local Board*, 26 L. J. Ch. 345; 23 Beav. 198.

A watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream. *Sutcliffe* v. *Booth*, 32 L. J. Q. B. 136.

Any violation of the provisions in this section will be restrained by injunction, and the party injured will not be referred to his claim for compensation. *Attorney-General* v. *Shugar*, *ante*, p. 362. But see note (*a*), *supra*.

A local board made certain sewers, and in doing so injuriously affected a stream without having the consent of T., who was the occupier of a mill on the stream, and entitled to the flow of the stream to his mill. It was held that the corresponding provisions of 21 & 22 Vict. c. 98, s. 73, were not confined to cases in which a court of equity would grant an injunction against the local board, and that T. was in the position of a person who would, if the Act had not passed, have been entitled by law to prevent the injuriously affecting of the stream. It was also held that the works not being authorized by section 73, the claim of T. was not the subject of compensation, but ground of action. *Reg.* v. *Darlington Local Board*, *ante*, p. 362.

The words of the concluding part of this clause reserve to the local authority power to challenge the right claimed by the parties referred to, and dispute that right independently of any justification under the Act.

(*e*) Although the consent is here required to be given in writing, it has been sought to stay summary applications in Chancery for injunctions against the works of local authorities by averments of *laches*, it being argued that such *laches* was equivalent to consent. But this defence was not successfnl in *Attorney-General* v. *Luton Local Board*, 2 Jur. (N.S.) 180, where there had been much negotiation and correspondence before the commencement of the suit. See, however, the judgment of WOOD, V. C., in *Attorney-General* v. *Proprietors of the Bradford Canal Company*, *supra*.

It is to be observed that 21 & 22 Vict. c. 98, s. 68, prohibited the doing of the works adverted to without consent in writing *first obtained;* and this prevented the operation of the law laid down in *Stainton* v. *Woolrych*, 26 L. J. Ch. 300; 23 Beav. 225, that works planned by public boards under statutes may be executed though they tend to the injury of neighbouring landowners, and consequently may be executed even without notice to them, though they may be entitled to compensation. Though the words *first obtained* are here omitted, it is presumed that the effect will be the same.

The consent in the text if given will not operate to protect the local authority from the consequences of their committing a public nuisance by their action.

(*f*) The consent of the directors or other board of management is doubtless referred to, as it would be quite impracticable to refer to the shareholders or

general proprietors for their consent, unless by the constitution of the company some means be given for summoning and collecting the body into one meeting. **Note to Sect. 327.**

328. Where the matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid (*a*), interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof (*b*), the local authority shall give to such body of persons or person a notice (*c*) specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration (*d*); (that is to say), Reference to arbitration in case of works not within preceding section.

(1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid:

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being *fully* compensated by money (*e*).

(*a*) It is not easy to ascertain what are the matters or things referred to. The previous section appears to prohibit almost all actions of the local board without consent. But it is contemplated that there may be some acts which do not come within the prohibition, and then this section provides for dealing with such acts.

It will be seen that the section refers to companies or persons authorized to act by some Act of Parliament, but such act need not be a private or local statute.

(*b*) Probably this refers to the popular phrase "improvement of a navigable river," and the following terms are governed by the word *interfere*; otherwise it is difficult to comprehend how the proposal of the local board can interfere with the improvement of any canal or dock. The proposal must be an immediate act, which can be examined and investigated with reference to the state of things, but that cannot be done with reference to the future improvement, which may possibly be prevented by the Act of the board.

(*c*) See sections 266, 267, *ante*, pp. 314—15, as to the authentication and service of notices.

(*d*) See section 179, *ante*, p. 209.

(*e*) Note the object of this subject of enquiry, namely, *full* compensation. That may be obtained by a payment in money, or it may be that such payment

Note to Sect. 328.

will not be adequate or quite appropriate; it may be necessary that some works should be executed, and the arbitrator is to determine this question.

It is to be noticed that this section does not contemplate that the arbitrator shall ascertain the amount of compensation for the injury, if any be experienced, but the next section does.

Effect of arbitration.

329. The result of any such arbitration shall be final, and the local authority shall do as follows (*a*); (that is to say),

(1.) If the *arbitrators* (*b*) are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2.) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation (*c*); and on payment of the amount so assessed, *but not before*, the local authority may proceed to do the proposed matters and things:

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given (*d*).

(*a*) This section and the preceding section are expressed with some little inaccuracy. First, it is stated in section 328, that two questions are to be submitted to the arbitrators, and afterwards in this section it is shown that another question may be submitted to and decided by them. Thus this section states that the local authority shall *do as follows*, and having required the arbitrators in a certain event to do a particular act, it empowers the local authority to proceed, and afterwards, upon a decision of the arbitrators in a manner described, prohibits the local authority from acting.

(*b*) It is presumed that the term *arbitrators* includes umpire. See section 180, sub-section (7), *ante*, p. 211.

(*c*) It would have been better to provide for compensation after the works shall have been completed and the amount of the damage actually ascertained, inasmuch as the estimate of the arbitrators may prove too high or too low; it is clear, however, that the payment is here made a condition precedent to the execution of the works.

(*d*) This will not prevent the local authority from negotiating with the party referred to for the execution of such works as will remove the objection which cannot be fully compensated with money.

Provision as to transfer of powers, &c.

330. No transfer of powers and privileges under this Act (*a*) shall deprive any body of persons or person authorized by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

(*a*) See sections 10, 270, 275, and 310, *ante*.

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Provision as to alteration of sewers.

331. Any body of persons or person authorized by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock harbour or basin (*a*), may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual, and certified as such by the surveyor to the local authority (*b*), take up, divert, or alter the level of any *sewers* drains culverts or pipes *constructed* (*c*) by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing paths thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration.

(*a*) This section modifies to some extent the provisions of section 26, *ante*, p. 43.

(*b*) Though the certificate of the surveyor is required, it does not appear that it will conclude the local board if they can show that the new sewers or pipes are not equally effectual as the old ones; and section 333, *post*, accordingly provides for the reference of such question to arbitration.

According to the language of the above section, no consent is required from the local board previous to the commencement of the works. The certificate of the surveyor is to be given after the works shall have been done. Nevertheless, if it should appear that the parties referred to are working in such a manner as obviously to be unprotected by this Act, an injunction would probably be granted by the High Court to stay these proceedings.

(*c*) It is to be presumed that these works of the local authority must have been executed with the consent of the parties referred to. Consequently it will be prudent, when such consent is given, to reserve power to make alterations as above contemplated.

Saving for water rights generally.

332. Nothing in this Act shall be construed to authorize any local authority to *injuriously affect* any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river or stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law (*a*) to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority *first obtain* (*b*) the consent in writing of the body of persons or person so entitled as aforesaid.

(*a*) See the notes on section 327, *ante*, p. 372. See also *Ripon (Earl of)* v. *Hobart*, 3 My. & K. 169; 3 L. J. Ch. 145, for the principles upon which the court proceeds in interposing by injunction between public companies or trustees in cases of apprehended mischief or nuisance.

If the local authority injuriously affects the rights of any company or individual in respect of matters to which this section applies, without the requisite consent, the remedy is not by compensation, but by injunction or by action for damages. *Reg.* v. *Darlington Local Board*, *ante*, p. 362.

Note to Sect. 332.

(*b*) Note these words and compare the language of section 327, *ante*, p. 372. It is not easy to understand how any public company can properly give their consent to the local authority injuring their reservoirs or streams of water. They may indeed sell the interest of the company in the same for adequate compensation, but the section appears to go further, and enables consent to be given without sale. When properly considered, however, it will be seen that it only operates to protect the local authority, and leaves the board of directors or managers to settle with their own constituents whether they shall or shall not give their consent to the proceedings proposed.

Arbitration as to alteration of sewers injuriously affecting supply of water, &c.

333. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid (*a*), whether any sewers drains culverts or pipes substituted under the powers of this Act (*b*) for sewers drains culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, *at the option* of the party complaining, be determined by arbitration in manner by this part of this Act provided (*c*). The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers canals docks harbours and basins (*d*).

(*a*) Reference is here made to section 331, *ante*, p. 377.
(*b*) That is under the powers in section 331, *ante*, p. 377.
(*c*) See section 328, *ante*, p. 375. The exact meaning of the words "at the option of the party complaining," is not obvious, as no alternative is stated. But the meaning appears to be that the complainant may bring an action, or if he chooses can compel a reference to arbitration.
(*d*) See section 329, *ante*, p. 376.

Saving for mines, &c.

334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

In *Re Dudley* (*Corporation of*), 8 Q. B. D. 86, 96; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. LINDLEY, J., said, referring to this section: "It is put that that section authorizes the uncontrolled working of mines, and no doubt the first part of the section logically goes that length, and even further, for logically it prohibits the taking of mines by purchase; but when the second part of the section is considered, it is clear that the whole section applies to nuisances only." BRETT, L.J., added that he took the same view It was held that the corresponding provisions of 18 & 19 Vict. c. 121, s. 44,

prevented the application of that Act to manufactures of the produce of ores and minerals, so that justices had no power to order the abatement of a smoke nuisance arising from a bichrome manufactory. *Norris* v. *Barnes*, L. R. 7 Q. B. 537; 41 L. J. M. C. 154; 26 L. T. (N.S.) 622; 20 W. R. 703. But observe that that Act excepted "the manufacturing of the produce of such ores and minerals" while the text does not. The decision is therefore merely an authority to the effect that the nuisance provisions of this Act do not apply to the matters expressly mentioned in the text.

With reference to the right to work mines or minerals under sanitary works, reference must now be made to the Public Health (Support of Sewers) Act, 1883, *post*.

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Saving for collegiate bodies and Government departments.

335. Any collegiate or other corporate body required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867 (*a*), shall apply in substitution for the last mentioned provisions.

(*a*) These Acts are 28 & 29 Vict. c. 75, and 30 & 31 Vict. c. 113. See also 35 & 36 Vict. c. 79, s. 56.

Saving for Metropolitan Board of Works.

336. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

Saving for payment in certain cases to local authority.

337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act 1858 Amendment Act 1861, to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district (*a*): Provided that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

(*a*) See 24 & 25 Vict. c. 61, s. 8, which is in the following terms:—"Where already or hereafter any premises *not* being *within the limits* of the local board

Note to Sect. 337.

have a drain communicating, directly or indirectly, with a sewer *within the district*, and maintained by the local board, and any sewage flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or failing agreement between them, as on the application of the local board is determined by two justices; and the yearly sum so agreed on or determined shall be *private improvement expenses*, and shall be charged on the premises, and be paid and recoverable accordingly as if the premises were within the district." Then follows a proviso as in the text above. It will be remembered that section 28, *ante*, p. 45, provides for a similar payment in future.

Saving for acts of authorities under certain local Acts.

338. *All rates orders acts or things made assessed performed or done, before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act*, 1872, *or of this Act.*

This section has been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

Saving for certain local boards.

339. Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any provisional order made under the Public Health Act, 1848 (*a*), and confirmed by Parliament, or the *qualification* or *number* of members of any such board; but any such Order in Council, or order so confirmed, or the Act confirming any such last-mentioned order, may be repealed altered or amended in manner provided by this Act (*b*).

(*a*) That is 11 & 12 Vict. c. 43. A similar restriction as to qualification is contained in section 312, *ante*, p. 366, in reference to boards under local Acts. The provisions in Schedule II., rule 2, will, as it seems, authorize an alteration of numbers in the local boards referred to in the text.

(*b*) See section 297, sub-section (5), *ante*, p. 347.

Saving for proceedings under local Acts.

340. Where within the district of a local authority *any local Act* is in force, providing for purposes the same as or similar to the purposes of this Act, *proceedings may be instituted* (*a*) at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

(1.) That no person shall be punished for the same offence both under a local Act and this Act; and

(2.) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the

performance of any duty or obligation to which they may be subject under this Act. Sect. 340.

(*a*) That is, actions may be brought or informations laid under either Act, or under both. This section meets the decision of the case of *Parry* v. *Croydon Coal, Gas, and Coke Company*, 11 C. B. (N.S.) 579; 15 C. B. (N.S.) 568.

It is sometimes of considerable importance to determine whether a local authority are acting under this Act or under a local Act. See *Burton* v. *Salford* (*Corporation of*), *ante*, p. 142. This section shows that the Act was not intended to repeal previous local Acts. *Monmouth* (*Mayor of*) v. *Monmouth* (*Overseers, &c., of*), 38 L. T. (N.S.) 612, 617.

Whether this clause provides for any proceedings other than actions or informations is doubtful. If the local Act is superseded by the transference of its powers to the urban sanitary authority, it is difficult to see how any such proceedings under the local Act can take place except, indeed, where actions for penalties are open to common informers. In such cases it is to be remarked that whereas under this Act the consent of the Attorney-General may be necessary, this preliminary will probably not be required by the local Act.

Powers of Act to be cumulative.

341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

But if proceedings can be taken *under both*, how is the proviso to be met? One Act may impose a penalty, say for a nuisance; the other may impose a penalty and provide for the abatement of the nuisance, or may provide for abatement only. If proceedings be instituted under both one penalty only is to be recovered, but the penalty may be recovered under one, and the abatement enforced under the other.

It will be seen that penalties are imposed by the Gas and Waterworks Facilities Act, *post*, for offences committed under that Act identical with those committed under this Act.

Oxford (*a*).

Constitution of local board of the Oxford district.

342. The local government district of Oxford shall be subject to the jurisdiction of a local board consisting of the vice-chancellor of the university of Oxford and the mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the university of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly within the jurisdiction of the commissioners, for amending

Sect. 342. certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof and the adjoining parish of Saint Clement, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

After the passing of this Act, a district formed out of the rural sanitary districts of the city of Oxford, and the Abingdon union, to be termed the "Grandpont district," shall be defined by an order of the Local Government Board (*b*), and on a day to be mentioned in such order, the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the members for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk, and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

The fifteen members to be elected by the university shall be elected as follows; namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls; any member of the university, being of the degree of Master of Arts, Bachelor of Civil

Law, or Bachelor in Medicine, or any superior degree of the university, shall be qualified to be elected; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time, and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now or may hereafter be chosen by them respectively, save that in the election of members the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote. Sect. 342.

Except as above provided, nothing in this Act shall affect the provisions of any order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

(*a*) See further as to Oxford, sections 6 and 205, *ante*, Schedule I. rule 13, and Schedule II. rule 75, *post*.
(*b*) This has been done.

Repeal of Acts.

343. The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualifications; (that is to say,) Repeal of Acts in Schedule V.

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect (*a*)—

(a.) Anything *duly done* or suffered under any enactment hereby repealed (*b*); or

(b.) Any right or *liability* (*c*) acquired accrued or incurred under any enactment hereby repealed; or

(c.) Any security given under any enactment hereby repealed; or

(d.) Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(e.) Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid; and any such investigation

Sect. 343. legal proceeding and remedy may be carried on as if this Act had not been passed.

(*a*) See section 326, *ante*, p. 371.

(*b*) The 11 & 12 Vict. c. 63, s. 72, required certain notices to be given to the local board before the laying out, making, or building upon any new street. This provision was repealed by 21 & 22 Vict. c. 98, except (section 9) as to "proceedings, matters, and things respectively begun or made" under any section of the former Act. Held, that where the proper notices had been given and plans lodged, this was a matter or thing *begun or made* within the last-mentioned section, although little or nothing appeared to have been done towards the formation of the streets of which notice had been given. *Felken* v. *Berridge*, 15 C. B. (N.S.) 257.

A notice was given by a local board of intention to make a rate under the Sanitary Acts, and the estimate was deposited, but before the notice expired this Act was passed. The local board, not being aware of the repeal, made a rate purporting to be made under the repealed Act. It was held that the notice was a thing done within this proviso, and that the reference to the repealed Act was immaterial. *Reg.* v. *West Riding JJ.*, 1 Q. B. D. 220; 45 L. J. M. C. 97; 35 L. T. (N.S.) 358; 40 J. P. 820.

(*c*) Where justices had made an order to abate a smoke nuisance, and prohibited its continuance under 18 & 19 Vict. c. 121, before the passing of this Act, it was held that the defendant thereby incurred a *liability* which was continued by this section, so as to be subject to a penalty for allowing the smoke to continue after the passing of this Act. *Barnes* v. *Edleston*, 1 Ex. D. 102; 45 L. J. M. C. 162; 33 L. T. (N.S.) 822; 40 J. P. 663.

It has been asked whether when local boards have acquired powers of making sewers or obtaining supplies of water under provisional orders duly confirmed before the passing of this Act, but such powers had not been completely executed at that time, they are affected by the provisions of this Act applicable to such matters. The better opinion appears to be that they are not.

SCHEDULES.

SCHEDULE I.

Rules as to Meetings and Proceedings.

(I.) *Rules applicable to Local Boards (a).*

Sched. 1. Part 1.

1. Every local board shall from time to time make *regulations* (*b*) with respect to the summoning, notice, place, management, and adjournment (*c*) of their meetings (*d*), and generally with respect to the transaction and management of their business under this Act.

(*a*) Note that these rules apply only to *local boards* as defined in section 4, *ante*, p. 3. They do not apply to municipal corporations, the meetings and proceedings of which are regulated by sections 198, 199, *ante*. The meetings and proceedings of boards of guardians acting as rural sanitary authorities are regulated by the General Order of 24th July, 1847, articles 28—43 (*Glen's Poor Law Orders*, pp. 54—72). It will be remembered that the Poor Law Orders apply to rural sanitary authorities by virtue of the concluding clauses of section 9, *ante*, p. 21.

(*b*) 11 & 12 Vict. c. 63, s. 34, required every local board to make bye-laws for these subjects, and these bye-laws were required to be published and confirmed in the manner therein provided. This is now altered; the local board are to make regulations, but such regulations are not bye-laws, nor to be treated as such. The local board may cause them to be published as they think fit. See section 188, *ante*, p. 218.

In *Mayer* v. *Burslem Local Board*, 39 J. P. 437, a local board had made the following bye-law:—"That no resolution of the local board be altered or rescinded unless one month's notice be given by the clerk to each member of the board, setting forth the proposed alteration, nor unless there be at least as many members of the board present at the meeting when such resolution was adopted." Blackburn, J., said that the last part of this bye-law might be invalid (see now rr. 2, 7, *post*), but that the first part was valid, and was a very salutary and competent bye-law.

(*c*) When a meeting is required to be summoned by notice, care must be taken to serve the notice on every member, as a default in this respect may render the meeting invalid. See *Dobson* v. *Fussey*, 7 Bing. 305. The general rule as to the adjournment of meetings is that notice of such adjournment is not requisite. *Kerr* v. *Wilkie*, 6 Jur. (N.S) 382; 1 L. T. (N.S.) 501; 24 J. P. 211; *Wills* v. *Murray*, 4 Ex. 843; 19 L. J. Ex. 209. But a previous bye-law or a future regulation may make a difference in this respect and must therefore be looked to.

(*d*) It has been decided that meetings of boards of guardians may be held in private, and in *Purcell* v. *Lowler*, 2 C. P. D. 215; 46 L. J. C. P. 308; 36 L. T. (N.S.) 416; 25 W. R. 362; 41 J. P. 789, Cockburn, C. J., intimated that this was the proper course to take when matters affecting the conduct of a particular person were being discussed. In that case a meeting of a board of guardians was held, and the conduct of the medical officer, P., was dis-

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cussed, several accusations of neglect of duty being made against him during the discussion. S., the proprietor of a newspaper, published a fair report of the proceedings, whereupon P. sued S. for libel. It was held that though the subject matter was of public interest, yet as the accusations were made *ex parte*, there was no privilege to protect S., and hence he was liable. This decision is affected to some extent by the Newspaper Libel Act, 1882; but save in this respect, it appears to be applicable to meetings of local boards, to which the public need not be admitted.

As to the removal of a disorderly member or stranger, reference may be made to *Doyle* v. *Falconer*, L. R. 1 P. C. 328; *Dobson* v. *Fussey*, 7 Bing. 305.

2. No business shall be transacted at any such meeting unless at least *one-third* of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than *seven* members be required.

The regulations generally provide for the action of the clerk in case a quorum do not attend. The usual regulation requires the clerk to make due notice of any failure of the meeting in the minutes.

3. Every local board shall from time to time at their *annual meeting* (*a*) appoint one of their number to be chairman for one year at all meetings at which he is present.

(*a*) The annual meeting is held as soon as convenient after the 15th April in each year. See rule 11, *post*. The year for which the chairman is to act must be that following his election, which will, as it seems, enable him to act until the meeting next ensuing the annual election in the following year. It would seem, therefore, that he will be entitled to preside at the next annual meeting at least until his successor is appointed.

4. If the chairman so appointed dies, resigns, or becomes incapable of acting (*a*), another member shall (*b*) be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, *and no longer*.

(*a*) If the chairman becomes disqualified to act as a member, he will become incapable of acting within these words. Sickness may also produce incapacity.

(*b*) This is imperative, and therefore it is the duty of the board to fill up the vacancy.

5. If the chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat.

If the chairman arrive after the commencement of business, it is the usual course to allow him to take the chair.

6. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

The concluding words of this rule are new, and prevent the votes from

being given by ballot. The provision as to the recording of the names appears to be directory, so that any omission in this respect will not affect the validity of the vote.

7. Every question at a meeting shall be decided by a majority of votes of the members present, and voting on that question.

The words "voting on that question" are new, and remove the difficulty which has been expressed in cases when some of the members present do not vote on the question, but do not leave the room. As to what amounts to voting on the question, see *Ex parte Orde*, L. R. 6 Ch. 881.

See also *Mayer* v. *Burslem Local Board*, *ante*, p. 385, as to the number of members who must vote in order to rescind a resolution.

8. In case of an equal division of votes the chairman shall have a second or casting vote.

If the chairman has voted and there is an equality of votes, he may vote again and decide the question, or if, not having voted, he counts the votes and finds them equal, he may then vote and decide the question.

9. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election, or selection, or qualification of any members thereof.

This is similar to the provision in 5 & 6 Vict. c. 57, s. 12, in regard to boards of guardians. That section was merely declaratory of a decision of the Exchequer Chamber in *Reg.* v. *Todmorden and Warden* (*Overseers of*), 1 Q. B. 185; 3 Q. B. 675.

10. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place, or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings (*a*); and, until the contrary is proved (*b*), every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

(*a*) In a recent case to which a local board were parties, the Court of Chancery ordered the minute book of the board to be sent up to London for inspection by the other side. *Attorney-General* v. *Whitwood Local Board*, 40 L. J. Ch. 592; 19 W. R. 1107.

It is common in bye-laws and regulations to provide that the minutes of a meeting shall be read and confirmed at the ensuing meeting. Lord Campbell, C. J., in *Reg.* v. *York* (*Mayor of*), 1 E. & B. 594, says that "public bodies confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate."

See, as to the evidence of minutes, *Inglis* v. *Great Northern Railway Company*, 16 Jur. 895; *Miles* v. *Bough*, 3 Q. B. 845; 12 L. J. Q. B. 74; *Sheffield, &c., Railway Company* v. *Woodcock*, 7 M. & W. 574. Notwithstanding the provisions in the text as to the signing at the meeting or at the

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next ensuing meeting, it seems that it is not a condition precedent to the admissibility of the minute, provided it has been signed at a subsequent time by the person who actually presided as chairman at either meeting. See *Southampton Dock Company* v. *Richards*, 1 M. & G. 448. And it would also seem that it is sufficient if the minutes of the adjourned meeting are signed. *Inglis* v. *Great Northern Railway Company*, 1 Macq. Sc. H. L. Cas. 112.

(*b*) Note that the minutes are only to be *primâ facie* evidence of regularity; but as this force is given to them, great care is required as to the keeping of them.

11. The annual meeting of a local board shall be held as soon as may be convenient after the *fifteenth* of April in each year.

This is a new provision. By 11 & 12 Vict. c. 63, s. 34, an annual meeting was required, but it was left to the local board to fix the time. 37 & 38 Vict. c. 89, s. 27, required it to be as soon as convenient after the annual election. In the text it is fixed to be after the 15th of April. This date corresponds with the annual meeting of boards of guardians, who are the rural sanitary authorities, and is the date when the election is concluded, as will be seen hereafter.

In other urban districts the annual meeting will generally be different, except when the provisions of this Act may be adopted.

12. The *first* meeting of a local board for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than *ten* days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman *for one year* at all meetings at which he is present.

The same person may be chairman of the meeting and for the year. In a case where the chairman's year of office under this section expires before the 15th of April, a chairman should be appointed for the residue of the term.

13. Nothing in these rules contained with respect to the appointment of chairman shall apply to the *Oxford district*, and in that district a chairman shall be appointed as heretofore.

See section 342, *ante*, p. 381.

(II.) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards.*

1. A committee or joint board may meet and adjourn as it thinks proper.

See sections 200—204, *ante*, pp. 229—232, as to committees, and sections 280—282, *ante*, pp. 335—336, as to joint boards. As regards committees, attention must be paid to the provisions contained in these sections applicable to them and their powers.

2. The quorum of a committee or joint board shall consist of such number of members as may be prescribed by the authority that appointed the committee or joint board, or, if no number is prescribed, of *three* members.

3. A committee or joint board may appoint a chairman of its meetings.

It is intended that this chairman is to be appointed for the term of the committee's or joint board's existence, or, at least, so long a time as he shall be qualified to act as member.

4. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

See note on Part (1), rule 5, *supra*.

5. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.

See note on Part (1), rule 7, *supra*.

6. In case of an equal division of votes the chairman shall have a second or casting vote.

See note on Part (1), rule 8, *supra*.

7. The proceedings of a committee or joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such committee or joint board, or of any member thereof.

See note on Part (1), rule 9, *supra*.

8. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the meeting at which such proceedings took place, or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

See the notes on Part (1), rule 10, *supra*.

SCHEDULE II.

(I.) Rules for Election of Local Boards (*a*).

Number and Qualification of Members.

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1. The number of members of a local board constituted after the passing of this Act shall be such number as is determined by the *order forming the district* (*b*).

(*a*) For a further statement of the details and steps in the election of members of the local board, see *Lumley's Local Board Election Manual.*

(*b*) See section 271, *ante*, p. 326, under which a district is constituted by an order. Under section 272, a district is declared by an order. In the first case the Local Government Board fix the number of the members. In the second this is done by the persons who vote for the constitution of the board; and the number appointed should be such as is divisible by three, since one-third are to go out of office annually.

See section 326, *ante*, p. 371, as to the number of the members of the boards previously formed.

2. The Local Government Board may from time to time by *order* (*a*), after local inquiry (*b*), increase or diminish the number of members of *any* local board, and may prescribe at what time or times and in what manner such increase or diminution shall take effect, and may vary *temporarily* the provisions of this schedule relating to the *continuance in office* and *retirement* of members so far as may be necessary for that purpose.

(*a*) This order is conclusive. See section 295, *ante*, p. 345.

(*b*) See section 293, *ante*, p. 345. Note that a charge may be made in *any* local board.

3. A person shall not be qualified to be a member of a local board unless he is at the time of his election, and so long as he continues in office by virtue of such election, *resident* (*a*) within the district for which or for part of which he is elected, or within *seven* miles thereof (*b*), and is seised or possessed of real or personal estate (*c*), or both, to the value of not less than *five hundred pounds* in districts containing less than *twenty thousand* inhabitants (*d*), or to the value of not less than *one thousand pounds* in districts containing *twenty thousand or more* inhabitants; or is *rated* (*e*) to the relief of the poor of such district, or of some parish within the same, on an *annual value* (*f*) of not less than *fifteen* pounds in districts containing less than *twenty thousand* inhabitants, or on an annual value of not less than *thirty* pounds in districts containing *twenty thousand or more* inhabitants.

(*a*) Much difficulty has been felt in applying this word to the cases which arise under different statutes, but here it is evident that a permanent abiding must be contemplated. The cases under the Municipal Corporations Act and

the Parliamentary Registration Acts may afford some assistance in determining the meaning of the word as here used. See for example *Reg.* v. *Exeter* (*Mayor of*), L. R. 4 Q. B. 110; *Durant* v. *Carter*, L. R. 9 C. P. 261; *Ford* v. *Pye*, *ib.* 269; *Ford* v. *Hart*, *ib.* 273; *Powell* v. *Guest*, 18 C. B. (N.S.) 72; *Taylor* v. *Overseers of St. Mary Abbott, Kensington*, L. R. 6 C. P. 309; 40 L. J. C. P. 45; *Bond* v. *Overseers of St. George's, Hanover Square*, L. R. 6 C. P. 312; 40 L. J. C. P. 47. According to BLACKBURN, J., in *Reg.* v. *Exeter* (*Mayor of*), a person may have more than one residence. See the note on the word as used in section 267, *ante*, p. 315.

(*b*) This must be measured in a straight line "as the crow flies," according to the interpretation now established in settlement and other cases. *Reg.* v. *Saffron Walden*, 9 Q. B. 76, 79; 15 L. J. M. C. 115; 10 Jur. 639; *Stokes* v. *Grissell*, 14 C. B. 678; *Mouflet* v. *Cole*, L. R. 7 Ex. 70; 42 L. J. Ex. 8; 27 L. T. (N.S.) 678; 21 W. R. 175.

(*c*) No particular locality is required for the real estate, and of course there can be none for the personal estate.

(*d*) It is usual to refer to the last census for the number of inhabitants. This can readily be done when the place is a borough or parish, but there will be much difficulty in cases where the place had no previous known boundary. The qualification, therefore, depends upon an element of great uncertainty in many places, and one which may vary from year to year.

Note the words *seised or possessed*. Mere title is not sufficient.

(*e*) In *Reg.* v. *Eddowes*, 1 E. & E. 330, it was held that when a person entered into occupation after the rate was made, and paid the portion of the rate proportionate to the time of his occupation, the rating was not sufficient to confer a qualification; but since 32 & 33 Vict. c. 41, s. 16, an incoming occupier is to have his name inserted in the rate when he comes into occupation, and is thenceforth to be deemed actually rated.

Note that only the *poor rate* is here referred to. This rule does not, like rule 11, *post*, make *payment* of the rates necessary for the qualification of a member of the board.

Note also that though in general only an occupier is rated, yet an owner may be rated under 32 & 33 Vict. c. 41, s. 4. See the notes to rule 11, *post*.

(*f*) See the case of *Baker* v. *Marsh*, 4 E. & B. 144; 24 L. J. Q. B. 1; 19 J. P. 117, in which it was held, with reference to the qualification of a town councillor, which depended upon the rating to the poor rate upon an *annual value* of not less than £15, that this term applied to the *rateable value* and not to the *gross estimated rental*. In *Easton* v. *Alce*, 7 H. & N. 452; 5 L.T. (N.S.) 323; 26 J. P. 280, it was held that where a local Act required as a qualification the being rated to the poor by one or more rates to the amount of £10 per annum, this referred to the amount of the annual rateable value, and not to the amount annually paid in rates. See also *Cooke* v. *Butler*, L. R. 8 C. P. 256; 42 L. J. C. P. 25; 27 L. T. (N.S.) 548; 21 W. R. 73; 37 J. P. 133, and the judgment of Lord BRAMWELL, in *Dobbs* v. *Grand Junction Waterworks Company*, 9 App. Cas. 49; 48 J. P. 5.

4. Where two or more persons are jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them (*a*), qualify each to be elected, or if two or more persons are jointly rated in respect of any property which if equally divided between them would qualify each to be elected, each of the persons so jointly seised possessed or rated may be elected, but the same property shall not at the same time qualify the owner and the occupier thereof (*b*).

(*a*) It appears to be unnecessary to inquire what are the respective portions of the interest of the parties in the property.

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(*b*) There is some difficulty in applying this proviso, which is taken from 10 & 11 Vict. c. 16, s. 7. Can a person who is the owner of a house be qualified in respect of his real estate, but the occupier, who is rated for the same, be disqualified? or does this proviso mean that the owner who has a valuable freehold estate, and the lessee who has also a valuable leasehold interest therein, shall not both be qualified? Again, if both be candidates, how is it to be determined which is qualified, and who is to determine the question? Perhaps these two questions may be settled by the order in which the nominations are made.

5. A person who is a bankrupt or whose affairs are under liquidation by arrangement or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy liquidation or composition are pending, of being elected member of a local board.

The term *insolvent* which was in 11 & 12 Vict. c. 62, s. 19, and led to much question, is here omitted.

It may be noticed that by the Bankruptcy Act, 1883, section 32, a person who has been adjudicated a bankrupt is incapable of being elected to or holding or exercising the office of mayor, alderman, councillor, guardian of the poor, member of sanitary authority, &c., but this disqualification is removed if the adjudication is annulled, or the court grants a discharge with a certificate to the effect that the bankruptcy was caused by misfortune. This enactment appears to supersede the above rule. See as to this and other disqualifications, rule 64, *post*.

Wards.

6. The Local Government Board may, by order (*a*) made on application in pursuance of a resolution of owners and ratepayers passed in manner provided by Schedule III. to this Act (*b*), and after local inquiry (*c*) divide any district into *wards;* and on the like application from time to time may abolish such wards, or alter the number or boundaries of such wards, and may determine and from time to time alter the proportion of members of the local board to be elected by each ward.

Provided that where a district has been divided into wards by a *provisional order*, such wards shall not be abolished or altered otherwise than by a provisional order confirmed by Parliament (*d*).

(*a*) This order is conclusive. See section 295, *ante*, p. 345. See the power of the board as regards the division into wards on the constitution of a district in section 271, *ante*, p. 326.

(*b*) See *post*, Schedule III., rules 45 and 46.

(*c*) See as to this inquiry, sections 293—296, *ante*, pp. 345—347.

(*d*) See section 297, *ante*, p. 347. A district may be divided into wards by a provisional order under section 271, *ante*, p. 326.

7. If any member is elected in more than one ward, he shall within three days notice thereof (*a*) choose, or, in default of his choosing, the local board at their next meeting (*b*) shall decide for which one of the

wards the member shall serve, and he shall thereupon be held to be elected in that ward only, and a vacancy shall be held to exist in the other ward or wards, and shall be filled up as if it were a casual vacancy (*c*).

(*a*) The notice here referred to is that of the returning officer. See rule 52, *post*.

(*b*) *Quære*, what is meant by the next meeting? The choice should be made within three days after notice, and the next meeting appears to refer to that held after the the last of the three days.

(*c*) That is by the other members of the local board. See rule 65, *post*.

8. No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.

9. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not *reside*.

These provisions were taken from the regulations for voting in wards at the election of guardians under 7 & 8 Vict. c. 101, s. 21, and consequently there is the same defect as in that section. The notice must be given every year, and if it be omitted, and the elector does not reside within the district, he cannot vote at any election. The defect has been cured as regards the election of guardians by 30 & 31 Vict. c. 106, s. 21.

No time of the year is specified for the giving of this notice. It should, however, be given in sufficient time to enable the voting papers to be filled up.

With regard to the nomination by an elector in a ward, see the note on rule 39, *post*.

Qualification of Electors, Scale of Voting, and Register of Owners.

10. The word "*owner*," when used in relation to the right of voting at any election of a local board (*a*), shall mean any *person* (*b*) for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a *rackrent* (*b*), or any *person* receiving on his own account, or as mortgagee or other incumbrancer in possession, the *rackrent* (*b*) of any such property.

(*a*) It will be remembered that there is another definition of owner in section 4, *ante*, p. 6.

(*b*) The words person and rackrent are defined in section 4, *ante*, pp. 5, 8. See also rule 11, note (*a*), *post*. Note that the word *owner means* and not merely *includes* the persons named. Hence, there may be persons who are

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owners in the ordinary sense, yet are not owners within the meaning of this definition. For example, the owner of land let at a ground rent is not in occupation, nor does he receive the rackrent. Again, a trustee appears to be excluded from the definition as he does not receive the rent on his own account.

11. A person (*a*) shall not be deemed a *ratepayer* (*b*) or be entitled to vote as such at any such election unless he has been *rated* (*c*) to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid (*d*) all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him *under this Act*, except rates which have been made (*e*) or become due within the six months immediately preceding (*f*).

(*a*) According to the definition of *person* in section 4, *ante*, p. 5, this word would include a corporation aggregate, but the general law relating to elections prevents such a corporation from voting. 30 & 31 Vict. c. 106, s. 10, provides a mode by which a corporation may vote as ratepayers through an officer nominated on their behalf, and that section may be considered as applicable to elections under this Act. It will be seen from rule 15, *post*, that corporations who are owners can appoint proxies to vote for them in that capacity.

By 13 & 14 Vict. c. 21, in all statutes the masculine gender includes the feminine; and as there is nothing at common law to prevent a woman from voting (see *Olive* v. *Ingram*, 2 Stra. 1114), an unmarried woman if duly qualified may vote. But a married woman cannot vote, and it was said by the court that the Married Women's Property Act had no reference to political or municipal rights. *Reg.* v. *Harrald*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N.S.) 616; 20 W. R. 328; 36 J. P. 438.

Bankruptcy does not disqualify if the voter continue to be rated and has paid the rate.

Persons in receipt of relief are disqualified from voting by 39 & 40 Vict. c. 61, s. 14.

The common law disqualification of persons who are aliens, infants, or lunatics, will apply to the ratepayer.

By 33 & 34 Vict. c. 23, s. 2, a person convicted of felony is disqualified from exercising any right of suffrage, unless he shall be pardoned under the great seal, or shall have suffered the sentence inflicted upon him. The Corrupt Practices Act, 1883, disqualifies persons convicted of offences under that Act for periods depending upon the offence of which the voter has been convicted.

Where the owner was rated in the place of the occupier under 13 & 14 Vict. c. 99, the occupier was held not to be a ratepayer competent to vote. *Richardson* v. *Gladwin*, E. B. & E. 138; 27 L. J. M. C. 193. But now by 32 & 33 Vict. c. 41, s. 19, the name of every occupier is to be entered in the rate book, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, and the occupier shall be deemed to be duly rated for any qualification or franchise depending upon rating, and the occupier whose name shall have been omitted, shall, notwithstanding such omission, and though no claim be made, be entitled to such qualification and franchise. The Court of Common Pleas decided that this section did not operate universally, but only in the cases provided for by sections 3 and 4 of the Act. *Cross* v. *Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 53; 23 L. T. (N.S.) 589; 19 W. R. 131; 35 J. P. 153. But the Court of Queen's Bench in a later case differed from this view, and held that this section was of general application. *Smith* v. *Seghill* (*Overseers of*), L. R. 10 Q. B. 422;

44 L. J. M. C. 114; 32 L. T. (N.S.) 859; 23 W. R. 745; 40 J. P. 228. Reference has been made in the course of this work (*ante*, p. 90), to the distinction between lodgers and occupiers. The latter will in most cases be qualified to vote when the rates are paid by the owner.

An owner who is rated and pays the rates under the Act just referred to, is entitled to vote as a *ratepayer* under this Act. *Reg.* v. *Hampton*, 6 B. & S. 923; 13 L. T. (N.S.) 431; 12 Jur. 583; 30 J. P. 246. But this apparently applies only to an owner who is *rated* under 32 & 33 Vict. c. 99, s. 4, not when the owner agrees to pay the rates under section 3.

(*c*) The rate must have been a valid rate. It must have been duly allowed and published, and be legal in other respects. Note that the provision as to *rating* applies only to the *poor rate*, not to rates made under this Act, though these must be paid to complete the qualification.

(*d*) 32 & 33 Vict. c. 41, s. 15, enables a poor rate to be made payable by instalments, and makes payment of each instalment available in respect of any qualification or franchise *pro tanto*, while section 7 renders payment of the poor rate by the owner available as a payment by the occupier in full for the purpose of any qualification or franchise, which, as regards rating, depends upon the payment of the poor rate, notwithstanding any allowance or deduction made to the owner.

(*e*) A poor rate is now to be deemed to be made on the day when it is allowed by the justices: 32 & 33 Vict. c. 41, s. 17.

(*f*) It is presumed that if the rate has been made payable by instalments, payment of such instalments as they become due will satisfy this enactment.

Where the occupiers of small properties are not rated to the district rate, the provisions contained in 32 & 33 Vict. c. 41, which relate to the poor rate, will not apply, but as they are not rated, it is contended that they cannot be in default, and that therefore they are entitled to vote.

12. Owners of and ratepayers in respect of property situated within the district for which the election is held shall be entitled to vote according to the scale following; (that is to say),

If the property in respect of which the *person* (*a*) is entitled to vote is rated to the poor rate on a *rateable value* (*b*) of less than *fifty* pounds, he shall have *one* vote; if such rateable value amounts to *fifty* pounds and is less than *one hundred* pounds, he shall have *two* votes; if it amounts to *one hundred* pounds and is less than *one hundred and fifty* pounds, he shall have *three* votes; if it amounts to *one hundred and fifty* pounds and is less than *two hundred* pounds, he shall have *four* votes; if it amounts to *two hundred* pounds and is less than *two hundred and fifty* pounds, he shall have *five* votes; and if it amounts to or exceeds *two hundred and fifty* pounds, he shall have *six* votes.

(*a*) As this scale applies to owners as well as to ratepayers, this word includes a corporation aggregate. See rule 11, note (*a*), *ante*, p. 394.

(*b*) This means *net annual value* as defined in section 4, *ante*, p. 8, and not the gross estimated rental. See note (*f*) to Schedule II., rule 3, *ante*, p. 391.

13. Any *person* (*a*) who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation.

(*a*) See rules 16 and 17, *post*.

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14. *Owners* (*a*) may give their votes either personally or by proxy.

(*a*) This word is used generally, and extends the provisions of the former Acts in which the right of voting by proxy was given only to corporations aggregate, joint stock companies, or bodies of proprietors or undertakers.

15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the Form M. in Schedule IV. to this Act.

The Commissioners of Inland Revenue have advised that this appointment requires a stamp of 10*s.*; (see the Stamp Act, 33 & 34 Vict. c. 97, Proxy, Letter of Attorney (6)); and their advice is supported by *R.* v. *Kelk*, 12 A. & E. 559. An adhesive stamp must be used and cancelled.

The appointment of a proxy by a corporation must be under seal.

No qualification of any kind is required by a proxy; and he may be appointed by any number of owners. His appointment may be limited to the particular election, or it may be general, in which case it will continue until revoked, or until the appointing owner retains the property.

16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than *six* persons) shall be entitled to vote individually as *owner* in respect of property belonging to such corporation or body of persons.

It has already been pointed out that the corporation cannot vote individually as *ratepayers*. See the note to rule 10, *ante*, p. 393.

17. Partners in a firm consisting of more than *six* persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

18. An *owner* or a *proxy* shall not (except at the first election of a local board constituted after the passing of this Act) (*a*) be entitled to have a voting paper delivered to him as such unless his name is on the *register* herein-after mentioned.

(*a*) This exception is necessary, for there is no machinery for making the register for the first election. See rule 31, *post*, as to the rights of an owner as proxy at a first election.

The register when made will be closed on the 16th March in each year, and cannot be opened for the succeeding twelve months. See rule 28, *post*.

19. The local board shall cause a *register* (*a*) to be made and kept, in which shall be entered the names addresses and qualifications of the owners claiming and entitled to vote, and the names *or descriptions* (*b*) addresses and qualifications of the appointors of proxies, and the names and addresses of proxies duly appointed.

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Any such register made before the passing of this Act (*c*) shall be deemed to be a register or part of a register under this Act.

(*a*) The Court of Queen's Bench had decided that an owner's claim was only available for the occasion for which it was sent in. See *R.* v. *Morgan*, L. R. 7 Q. B. 26; 41 L. J. Q. B. 55; 25 L. T. (N.S.) 930; 20 W. R. 279; 37 J. P. 165. Hence in 37 & 38 Vict. c. 89, s. 23, a provision was made for establishing a register of claims and proxies to be available for all subsequent occasions, and the present Act extends the provision by requiring the register to be revised by process similar to that adopted and in regard to the election of guardians by 7 & 8 Vict. c. 101.

(*b*) The owners being corporations or joint stock companies or similar bodies may have no names, and hence the *descriptions* are to substituted for the names.

(*c*) It is presumed that this means the register made under 37 & 38 Vict. c. 89, s. 23, above referred to.

20. A claim (*a*) by an owner or proxy to be entered on the register shall state his name and *address* (*b*) within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof (*c*).

(*a*) There is no reason for supposing that this claim requires a stamp.

(*b*) An *address* is a place to which reference may be made or a letter may be directed. It need not be a *residence* or even a *place of business;* but note that it must be within the district.

(*c*) These requisitions are similar to those in the case of the election of guardians.

21. A claim by an owner or proxy may be made by writing in the Form L. in Schedule IV. to this Act.

22. A person entitled to vote (*a*) either as owner or ratepayer may object to the keeping of any name on the register by writing in the Form L. in the said Schedule.

(*a*) Whether a person whose claim as owner has not been settled can object, will be a question to be answered probably in the affirmative, otherwise in the case of the first register there might be objection possible.

23. Claims and objections shall be sent (*a*) to the chairman of the local board on some one of the *first six days of March* (*b*) and a claim or objection sent at any other time shall not be admitted by the chairman.

(*a*) As to the sending of these claims and objections probably the provisions of section 267, *ante*, p. 314, as to the sending of notices and other documents, will be available. Personal delivery is not necessary.

(*b*) See rule 66, *post*. It appears that a claim may be sent so as to be received on a Sunday. *Rawlins* v. *West Derby* (*Overseers of*), 2 C. B. 72; 10 Jur. 268; 15 L. J. C. P. 70.

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24. A person making an objection shall also give written notice thereof to the person objected to by leaving the same at the *address* within the district of that person.

As to this address, see rule 20, note (*b*), *ante*, p. 397.

25. The chairman shall, between the *twentieth of February* and the *first day of March*, publish a notice, in the Form L. in Schedule IV. to this Act, and signed by him, of the time within which claims and objections are to be made as aforesaid, and shall cause a copy of such notice to be inserted in some local newspaper circulating in the district and to be affixed at the places where *parochial notices* are usually affixed.

The parochial notices are probably the notices of vestry, &c., which are affixed according to 1 Vict. c. 45, on the doors of all churches and chapels within the district. The notice must be affixed to the principal door of every church or chapel however recently built; but this applies only to churches and chapels of the Established Church, not to churches where divine service has ceased to be celebrated, nor to places other than churches or chapels in which divine service is celebrated, nor to dissenting chapels. *Ormerod* v. *Chadwick*, 16 M. & W. 367; 16 L. J. M. C. 143; 11 J. P. 138; *Ex parte Warblington*, 18 Jur. 494; *Reg.* v. *Whipp*, 4 Q. B. 141; 7 Jur. 194; 12 L. J. M. C. 64.

26. The chairman on the expiration of the time for sending in claims and objections shall with the assistance of such persons (if any) as *the local board* may appoint (*a*), proceed forthwith to revise the register by entering thereon the *names* of the persons who have claimed and are proved to his satisfaction to be entitled to vote as owners or proxies respectively (*b*), and the other particulars by this schedule required to be entered with respect to owners and proxies, and by expunging from the register the names of owners and proxies who are proved to his satisfaction to be dead or to have ceased to be entitled to vote (*c*).

(*a*) Note that he is not hereby entitled to appoint assistants himself.

(*b*) These words seem to imply that the chairman must require proof of qualification in every case whether objected to or not. This, however, is contrary to the general rule in the revision of registers of voters or electors.

(*c*) Perhaps here he may act without previous objections, but it would be somewhat hazardous, and he will do well to abstain.

27. For the purpose of enabling the chairman to determine the validity of claims and objections he may examine such persons and call for such evidence from the persons making the same as he may think fit; any person may tender himself to be examined (*a*); but no person shall be entitled to be examined or to be heard before the chairman in support either of a claim or an objection (*b*).

(*a*) The statute does not in terms confer upon the chairman any power to administer an oath; but 14 & 15 Vict. c. 99, s. 16, provides that every person having by law power to hear, receive, and examine evidence, is empowered to administer an oath to all such witnesses as are legally called before him.

(*b*) These words prevent the person from claiming to be heard as of right.

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28. Not later than the *sixteenth of March* the chairman shall close the revision and sign the revised register, and that register shall continue in force for the *twelve months* next ensuing.

So that in the interval no other owner or proxy can vote. See rule 18, *ante*, p. 396. *Quære*, whether a person on the register can vote who has lost his qualification. See as to the register of burgesses *Reg.* v. *Tugwell*, L. R. 3 Q. B. 704, 709; 38 L. J. Q. B. 12; 33 J. P. 101.

29. If the chairman is unable or unwilling to conduct the revision of the register, the local board shall appoint some person to conduct the revision, and in default of such appointment the revision shall be conducted by the clerk to the local board. Any person so appointed or the clerk shall for the purposes of the revision have the same powers and duties as the chairman of the local board.

If the inability of the chairman arise pending the revision, it is presumed that the local board may appoint another person to complete it See the observations as to a similar contingency in the case of the returning officer, *post*.

30. The register shall be open to the *inspection* of candidates and other persons interested in any election or in any question at which any such owner or proxy claims to vote, subject to such rules as the local board may prescribe for the prevention of loss injury or disorder.

The taking of a copy is not provided for, but probably the local board may make a rule to allow it under proper precautions.

31. At the *first election* of a local board constituted after the passing of this Act an owner or proxy shall be entitled to have a voting paper delivered to him if not less than *fourteen days* before the last day appointed for delivery of the voting papers (*a*) he sends a claim in writing to the returning officer containing such particulars as are hereinbefore required (*b*) to be contained in claims to be entered on the register of owners and proxies.

(*a*) Hence the summoning officer in settling his notice of election must leave sufficient time for this requisition to be complied with, and from his notice of election the owner and proxy will learn what is the day for delivering voting papers. As to the returning officer for the first election, see rule 33, *post*.

(*b*) See rule 20, *ante*, p. 397.

Returning Officer.

32. The returning officer, for the purposes of the election of a local board shall be the chairman of the board (*a*), or in the case of the first election, if the district is constituted by provisional order (*b*), such person as may be appointed by order of the Local Government Board (*c*); and if the district is constituted in pursuance of a resolution of owners

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and ratepayers, the summoning officer of the meeting of owners and ratepayers; and all powers and duties by this Act vested in or imposed on the returning officer, and all other duties requisite to be performed by him in relation to such election, shall be exercised and performed by the chairman or such person as aforesaid (*d*).

(*a*) It is to be presumed that the chairman *de facto* is to conduct the election, and that it is not competent to persons to call in question the legal title of the returning officer. If the chairman be a candidate, it seems that he will be unable to exercise the powers of returning officer, and that another person must be appointed to preside. *Reg.* v. *Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; 23 J. P. 741; *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; 36 L. J. Q. B. 18; 15 L. T. (N.S.) 242; 15 W. R. 105; 31 J. P. 200; *Reg.* v. *White*, L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; 16 L. T. (N.S.) 828; 15 W. R. 988; 31 J. P. 595.

In *Reg.* v. *Ward*, L. R. 8 Q. B. 210; 42 L. J. Q. B. 126; 28 L. T. (N.S.) 118; 21 W. R. 632; 37 J. P. 453, the chairman being about to go out of office, another person was appointed to act as returning officer in case of the chairman being nominated for re-election. Nomination papers were sent in due course to the chairman, and among them one nominating himself as a candidate. He nevertheless continued to receive the nomination papers, and when all had been delivered, he prepared the voting papers, inserting thereon the names of the persons nominated. He did not further act as returning officer, and he was returned as re-elected. There was nothing to show that the names had been inserted in the voting papers otherwise than in their proper order, or that the result of the election had been in any way affected by the voting papers having been prepared by the chairman instead of by the person appointed to act as returning officer. It was held that, assuming the chairman's conduct to have been irregular, the court in its discretion ought not to allow an information to be filed against his election, no mischief having been done. The court intimated, however, that if a chairman were wilfully and contumaciously to act in his own election, they might allow an information to go.

(*b*) See section 271, *ante*, p. 326.

(*c*) See section 295, *ante*, p. 345.

(*d*) See Schedule III., *post*.

33. If the office of chairman is vacant at the time when any such power or duty must be exercised or performed, or if the chairman or such other person as aforesaid, from illness or other sufficient cause, is unable to exercise or perform such powers or duties, or is absent, or refuses to act, some other person shall be appointed (in case of the first election) by the Local Government Board, and (in any other case) *by the local board*, to exercise or perform such powers and duties.

If the board must do this, an application may be made for a *mandamus* to compel the appointment.

In a case where the chairman was absent during the election, and being by reason of defective eyesight unable by personal examination to ascertain the validity of the votes or to cast them up, conducted the election by two persons appointed by the local board before the election to assist and attend upon him for that purpose, and ascertained the validity of the votes by their examination conducted in pursuance of his directions, and nothing occurred in the examination which had not been provided for by his directions or which required his presence: it was held on a *quo warranto* information against one of the persons so elected, that the election was void; for the chairman could not delegate his duties, and the persons appointed to assist (see the next rule) were not

appointed to act in his stead under the provisions corresponding to this rule. *Reg.* v. *Backhouse*, 7 B. & S. 911; L. R. 2 Q. B. 16; 36 L. J. Q. B. 7; 15 L. T. (N.S.) 240; 31 J. P. 116.

34. The local board, or in case of the first election, the returning officer, shall, before or during the election, appoint a competent number of persons to assist the returning officer in conducting and completing the same.

These persons cannot act for the chairman or in his absence. See *Reg.* v. *Backhouse*, *supra*. The chairman has no power under this provision to appoint them in the first place.

The local board have no right to control the chairman in the exercise of his duties as returning officer, so that he cannot avoid responsibility for his acts or omissions by any order or direction of the local board.

35. If any returning officer appointed by the Local Government Board dies refuses or becomes incapable to act, the Local Government Board may appoint another person to act in his stead.

Election (*a*).

36. The returning officer *shall* (*b*) after the close of the revision of the register but not less than *fourteen days before* the last day appointed for delivery to him of nomination papers, publish a notice, signed by him, and specifying—

The *number* (*c*) and qualification of the persons to be elected;

The place where the nomination papers herein-after mentioned are to be delivered or sent to him;

The last day on which they are to be delivered or sent in;

The mode of voting in case of a contest (*d*);

The day or days on which the voting papers will be delivered and the day on which they will be collected; and

The place for the examination and for the casting up of the votes;

and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed (*e*).

(*a*) This and the following directions are similar to those prescribed for the election of guardians, as to which see the General Order (Consolidated), 14th February, 1877, *Glen's Poor Law Orders*, p. 1.

(*b*) This word is generally considered to be imperative, but it may be presumed that a slight error or omission in the notice will not render the election a nullity. Whether the election could be sustained if the notice were wholly omitted or were framed so as to mislead the electors is a more serious question, the answer to which would probably be in the negative.

Note that the revision is closed on the 16th March, and the notice must give fourteen days' notice for the delivery of the nominations.

(*c*) In *Reg.* v. *Rippon*, 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. (N.S.) 444; 24 W. R. 363; 40 J. P. 536, an election was held to be void on the ground that the notice of election did not distinguish between ordinary and casual vacancies. See on the same point, *Reg.* v. *Leeds* (*Mayor, &c., of*), 7 A. & E. 963; *Reg.* v. *Rowley*, 2 Q. B. 143; 6 Q. B. 668. Rule 65, *post*, provides for

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the future as to who when elected is to fill any casual vacancy; but it still remains to be seen whether that rule will remove the difficulty, for the electors may not have had an opportunity themselves of filling up the vacancies according to their own judgment if notice of the separate vacancies is not given to them.

(*d*) A short statement of the proceedings subsequent to the nominations appears to be required.

(*e*) See the note to rule 25, *ante*, p. 398.

37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

38. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the election is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer (*a*). Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding *five* pounds (*b*).

(*a*) The clerk or overseer is not authorized to charge for the inspection, but he is not required to attend the returning officer with any document, and therefore if the latter desire such attendance he must be prepared to pay for it. Note that this rule does not authorize the taking of the books out of the custody of the officers having the legal charge of them.

(*b*) See as to the recovery of this penalty, section 251, *ante*, p. 345.

39. Any person entitled to vote (*a*) may nominate for the office of member of the local board himself (if qualified to be elected), or any other person or persons so qualified (*b*) (not exceeding the number of persons to be elected) (*c*).

(*a*) Where the district has been divided into wards according to the provisions noticed in rules 6—9, *ante*, no person can nominate for any ward who is not qualified to vote in such ward. *Reg.* v. *Parkinson*, 8 B. & S. 769; L. R. 3 Q. B. 11; 37 L. J. Q. B. 52; 16 W. R. 78; 17 L. T. (N.S.) 169; 32 J. P. 244.

(*b*) If a candidate who receives a majority of votes is not qualified to be elected, the returning officer may declare the other candidates to be elected. *Reg.* v. *Ellis*, 44 J. P. 748. And see rule 52, *post*.

(*c*) If a nominator signs more nomination papers than he is allowed to do by this rule, those first delivered are valid. Those delivered in excess of the number allowed are invalid. See *Burgoyne* v. *Collins*, 8 Q. B. D. 450; 51 L. J. Q. B. 335; 30 W. R. 923; 46 J. P. 390.

Perhaps there will not be any objection to the separate nomination of candidates to fill ordinary vacancies and of candidates to fill casual vacancies; but the machinery provided by the Act does not enable this distinction to be well carried out.

40. Every such nomination shall be in writing, and shall state the names and residence (*a*) and calling or quality (*b*) of the person or per-

sons nominated, and shall be signed by the person nominating, and be delivered or sent to the returning officer (*c*). Sched. 2. Part 1.

(*a*) With regard to the statement of the *names*, it would seem that initials of christian names are sufficient so long as the party designated is clearly identified. See *Reg.* v. *Hartlepool*, 15 Jur. 1158; 21 L. J. Q. B. 71; *Reg.* v. *Avery*, 18 Q. B. 376. Such an abbreviation as Wm. or Willm. is sufficient. See *Reg.* v. *Bradley*, 3 E. & E. 634; 30 L. J. Q. B. 180; 3 L. T. (N.S.) 853; 25 J. P. 197; *Henry* v. *Armitage*, 53 L. J. Q. B. 111; 32 W. R. 192.

The word *residence* is difficult to interpret. The courts of law assign different meanings to it according to the subject matter in connection with which the question arises. See the note to the word as used in section 267, *ante*, p. 315. It may be best to regard the word as here used to mean place of abode. The following cases decided with reference to the term in other Acts may be referred to. *Reg.* v. *Hammond*, 17 Q. B. 772; *Reg.* v. *Deighton*, 5 Q. B. 896; *Luckett* v. *Knowles*, 2 C. B. 187; *Allen* v. *Greenhill*, 4 C. B. 100.

(*b*) Such as baronet, knight, esquire, or gentleman, which words signify the *quality*. Professional titles appear to fall under the word *calling*. The qualification of the nominator is not required to be stated, hence an error in such a statement, if made, is not material. *Reg.* v. *Morgan*, L. R. 7 Q. B. 26; 41 L. J. Q. B. 55; 25 L. T. (N.S.) 930; 20 W. R. 279; 36 J. P. 136.

(*c*) It will be seen that this provision does not render sending by post sufficient of itself, so that the failure of the post office to deliver in time may cause a failure in the nomination.

The delivery of a nomination paper on Sunday is probably good. See *Westbury-on-Severn Union, In re*, 4 E. & B. 314; *Rawlins* v. *West Derby (Overseers of)*, *ante*, p. 397.

41. Any person nominated may withdraw from *his* candidature (*a*) by giving notice (*b*) to that effect, signed by him, to the returning officer.

(*a*) It is presumed that this provision is the same as that in 11 & 12 Vict. c. 63, s. 24, which applied to every person put in nomination, and is not confined to cases where a person nominates himself directly or indirectly.

(*b*) This notice must be given to the returning officer, and should be in writing. No specific form is required, but it should be certain in its terms, and free from any condition.

42. If the number of persons nominated and not withdrawn is the same as or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed and shall be *certified* by the returning officer under his hand to be elected.

See rule 52, *post*.

43. If the number nominated and not withdrawn exceeds the number to be elected, the returning officer shall cause voting papers, in the form N. (*a*) contained in Schedule IV. to this Act, to be prepared and filled up, and shall insert therein the names and residence, and the calling or quality of each of the persons nominated and not withdrawn in the *alphabetical order* (*b*) of the surnames of such persons, but it shall

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not be necessary to insert more than once the name of any person nominated (*c*).

(*a*) See *post*, p. 437.

(*b*) This is a new provision. In 11 & 12 Vict. c. 63, s. 24, the names were to be arranged in the order of the receipt of the nominations. This led to unseemly struggles and contests. The text removes the cause for them, but works some little injury to candidates with surnames low in the alphabet.

(*c*) This does not justify the omission of the names of any of the nominators in cases where a candidate has been nominated more than once, but the form of voting paper (Schedule IV., Form N.) contains a column for the names of the nominators, *or one of them*. The provisions of this rule with regard to the filling up of the form are so far directory that the omission to fill in the number of votes assignable to the voter will not render the election void, though it may expose the returning officer to a prosecution for a penalty under rule 68, *post*. *Reg.* v. *Lofthouse*, L. R. 1 Q. B. 433; 7 B. & S. 447; 35 L. J. Q. B. 141; 12 Jur. (N.S.) 610; 14 L. T. (N.S.) 359; 14 W. R. 649; 30 J. P. 453. The names of all the persons nominated must, however, be inserted. Per MELLOR, J.

44. The returning officer shall, *three* days at least (*a*) before the day of collection of the voting papers (*b*) cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the *address* (*c*) stated in the register or claim of each owner and proxy, and at the *residence* (*d*) within the district of each ratepayer entitled to vote therein.

(*a*) These days are to be both exclusive. See *Zouch* v. *Empsey*, 4 B. & Ald. 522; *Reg.* v. *JJ. of Salop*, 8 A. & E. 173; 7 L. J. M. C. 56.

(*b*) This is substituted for the day of election in 11 & 12 Vict. c. 63, s. 24, which was not defined until 37 & 38 Vict. c. 89, s. 26, declared that the day of election should in all cases be the day of the collection of the voting papers.

(*c*) See rule 20, *ante*, p. 397.

(*d*) There is here an addition to the provision in 11 & 12 Vict. c. 63, s. 24, as the residence of the ratepayer at which the delivery is to be made must be within the district. Delivery need not be made out of the district, but an elector whose residence is without the district may vote if he proceed according to the provisions of rule 49, *post*.

45. Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper.

If a greater number be marked than the number to be elected, the vote will fail for uncertainty.

In *Reg.* v. *Strachan*, L. R. 7 Q. B. 463; 41 L. J. Q. B. 210; 26 L. T. (N.S.) 835; 20 W. R. 629; 36 J. P. 727, it was held that 33 & 34 Vict. c. 97, s. 102, as to the stamp on a voting paper, did not apply to such papers at municipal elections. Hence it may be considered that it does not apply to the voting papers in these elections.

The voter is here required only to sign the voting paper, and there is no place for his address in the form given in the schedule; but the directions there appended require him to state his address. It is probably sufficient to sign according to the requisition in the text.

As no voting paper should be sent to a firm, so the signature of a firm is insufficient.

A person who cannot write may mark his paper in the manner provided by rule 47, *post.*

The text makes no provision for signature by an agent. See, as to the fabrication of voting papers, rule 69, *post.*

46. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

The same remarks apply here as have been already made upon the preceding rule.

47. Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

There is a discrepancy between this rule and the "directions for voting" appended to Form N. in Schedule IV. By this rule the voter is to affix his mark at the foot of the paper, and the witness is then to sign his name against the mark and to write the initials of the voter against the names of the candidates voted for. By the directions for voting the voter is to make his mark instead of initials.

48. The returning officer shall cause the voting papers to be collected on the day of collection (which shall not be later than the *seventh of April*) by such persons as he may appoint.

See the provision in rule 66, *post*, as to Sunday and other special days.

49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter (*a*), nor unless the same is collected by the persons appointed for that purpose: Provided—

(a.) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid (*b*), he shall, on *personal* (*c*) application *before the day of collection* to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and *then and there* to deliver the same to him:

(b.) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same (*d*), the voter *in person* may deliver the same to the returning officer before *twelve o'clock* at noon on the *day* or on the first day (as the case may be) appointed for the *examination* and casting up *of the votes* (*e*).

(*a*) That is *reddendo singula singulis*, to the address of the owner and to the residence of the ratepayer. See rule 9, *ante*, p. 393, as to the residence of the ratepayer in a ward.

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(*b*) This may happen if a ratepayer residing out of the district has not received a voting paper, or if an owner having no address in the district has not received one, or if the distributor has negligently or accidentally omitted to serve one on a person within the district. If a voting paper has been duly left, and has been lost or accidentally destroyed, the case does not appear to be within this proviso. If a paper which has been left is defective, probably this is equivalent to there having been no paper delivered.

(*c*) Note the introduction of this word. The voter must apply in person.

(*d*) The default of the voter himself, whether accidental or negligent, gives him no right under this proviso.

(*e*) Note that under the first proviso application must be made before the day of collection. Under the second the paper may be delivered before twelve o'clock on the day appointed for casting up the votes.

50. If any person nominated, or any person on his behalf, gives at least one clear day's notice in writing to the returning officer, before the delivery or collection of the voting papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer shall make his arrangements so as to enable the person appointed by him to be so accompanied, but no such agent shall interfere in any respect in the delivery or collection of the voting papers.

The agent will do well to refer to rule 69, *post*. It will be the duty of the agent to see that the papers are completely, duly, and honestly delivered and collected by the proper officers, and thus he will act as a check upon such officers and upon the agents of opposing candidates. If he violates the above provision, he will be liable to indictment for a misdemeanor in acting contrary to the provisions of a statute.

Counting of Votes.

51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend *at the place appointed* (*a*) for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit (*b*); he shall cast up such of the votes as he finds to be valid, and to have been duly given, collected, or received, and shall ascertain the number of such votes for each candidate (*c*).

Any candidate may himself attend, or may appoint any agent to attend, the examination and casting up of the votes (*d*); any candidate or agent so attending who obstructs or in any way interferes with the examination and casting up of the votes may, by order of the returning officer, be forthwith removed from the place appointed for that purpose, and if so removed shall not be permitted to return.

(*a*) The corresponding provision in 11 & 12 Vict. c. 63, s. 27, was held by Lord Campbell, C. J., in *Reg.* v. *Cross*, 19 L. T. (o.s.) 36; 16 J. P. 215, to

be merely directory. He held also that the casting up at the clerk's room, which was away from the board room, was valid. Note, however, that the place appointed must now be stated in the notice of election. See rule 36, *ante*, p. 401; and see also rule 50, *ante*, which provides for the delivery of certain voting papers at the place appointed. *Quære*, therefore, if the provision in the text would now be held to be directory only.

(*b*) See the note to rule 27, *ante*, p. 398.

(*c*) The returning officer may at this time correct any error which he may have made in filling in the number of votes assigned to the voter.

With regard to the duties of the chairman the following case should be referred to. After the election of a local board the chairman proceeded to ascertain the number of valid votes for each candidate and to cast up the votes, and he made his certificate as to who were the candidates elected. On the trial of a *quo warranto* information against one of the successful candidates, it appeared that the chairman had by mistake (1) put down votes to one candidate which the voting papers showed had been given for another; (2) had omitted to reckon votes; and also (3) had received as valid votes which were invalid, but as to which he had made no examination. Held by the Court of Appeal that as to the first and second classes of votes, the duty of the chairman was merely ministerial, viz., that of casting up the votes, and as to this his certificate could be impeached; but that as to the third class he had to exercise a judicial duty, and as to this, therefore, his certificate was conclusive. *Reg.* v. *Collins*, 2 Q. B. D. 30; 46 L. J. Q. B. 257; 36 L. T. (N.S.) 192.

(*d*) This provision is new, though in practice the candidate or his agent often attended at the counting of the votes.

52. The candidates to the number to be elected who, being duly qualified (*a*), have obtained the greatest number of votes, shall be deemed and shall be certified by the returning officer under his hand to be elected, and to each person so elected the returning officer shall forthwith send or deliver notice of his election.

(*a*) See rule 12, *ante*, p. 395, as to the scale of votes. The chairman is not to act ministerially only and return the party who may have received the greatest number of votes, but he must ascertain who are duly qualified, and return the duly qualified candidates who have the majority. *Reg.* v. *St. Pancras* (*Inspector of votes of*), 7 E. & B. 954; S. C. *Ex parte Ross*, 21 J. P. 420; *Reg.* v. *Ellis*, 44 J. P. 748.

It has already been pointed out that while the duty of the chairman in casting up the votes is ministerial, his duty in deciding as to the validity of the votes is judicial, and his decision cannot be questioned on *quo warranto*. *Reg.* v. *Cross*; *Reg.* v. *Collins*, *supra*; and see *Reg.* v. *Diplock*, L. R. 4 Q. B. 549; 34 J. P. 118. These decisions, however, still leave open questions as to the sufficiency of the qualification of the candidate, and of the nominator, the regularity of the proceedings, and illegal, partial, or corrupt conduct on the part of the returning officer, all of which might be open to investigation in such an information.

See rule 68, *post*, as to the misconduct of the returning officer in the management of the election.

53. The returning officer shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify such list, and shall deliver *the same* (*a*), to-

Sched. 2. Part 1. gether with the nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

(*a*) Thus the certificate, which is the return, is placed and remains with the board itself.

54. Such list shall during *office hours* (*a*) be open to public inspection (*b*), together with all other documents relating to the election, for six months after the election, without fee or reward ; and the returning officer shall, as soon as may be after the completion of the election, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices (*c*) within the parts for which the election has taken place.

(*a*) These are settled by the bye-laws or regulations of the local board.
(*b*) No provision is here made as to copies of any of the documents, but notes or memoranda may be made, otherwise the inspection may be useless.
(*c*) See the note on rule 25, *ante*, p. 398.

55. The returning officer shall make all his arrangements for the conduct of the election so as to ensure its completion, and the ascertainment of the result, on or before the *fifteenth of April* in each year (*a*) ; and on that day the candidates elected shall come into office, and until that day the members in whose room they are elected shall continue to hold office.

Provided that the first election of a local board for a district constituted *after* the passing of this Act may be held at any time mentioned in the order constituting the district (*b*), and the members shall come into office on the day appointed for their first meeting (*c*), but shall for the purposes of retirement be deemed to have come into office on the fifteenth of April next following the commencement of the order (*d*).

(*a*) See also rules 59 and 62, *post*. Before 37 & 38 Vict. c. 89, there was no uniformity as regards the commencement of the year of office of local boards. It occurred at all times of the year. It has been deemed expedient to fix it now on or before the 15th April, which is the day appointed for the commencement of the year of office of boards of guardians, that is, of rural sanitary authorities. Though some latitude is allowed by the words *on or before*, it is obvious that the completion of the election should not be far off the 15th of April. At the same time as it cannot be foreseen when there will or will not be a contest, there cannot be an absolute decision in all cases.
(*b*) This is under section 271 or section 272, *ante*.
(*c*) See as to this, Schedule I., rule 12, *ante*, p. 388.
(*d*) See section 275, *ante*, p. 331, as to the commencement of the order. It will follow that in most cases of a new board, the first members will now hold office for a longer period than they would have done under former statutes.

Declaration to be made by Members (*a*).

56. A person shall not act (*b*) as a member of a local board (except in administering the following declaration) until he has made and signed

before two or more other members of such board a declaration in writing to the effect following ; (that is to say), Sched. 2. Part 1.

"I *A.B.* do solemnly declare, that I am seised or possessed of real or personal [*or* real and personal] estate to the value or amount of [*or* that I am rated to the relief of the poor of on the annual value of .]

"(Signed) *A.B.*

Made before us *C.D.* and *E.F.*, members of the Local Board for the District of this day of ."

(*a*) This is similar to the declaration required by 10 & 11 Vict. c. 16, s. 12.
(*b*) If he do so act, he will be liable to a penalty, though his acts previous to the recovery of the penalty will be valid. See rule 70, *post*, p. 417.

57. Such declaration shall be signed by the person making the same, and shall be filed and kept by the clerk of the local board ; and any person who falsely or corruptly makes and subscribes such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a *misdemeanour.*

Consequently he will be liable to be indicted, and on conviction will be liable to punishment by fine or imprisonment.

58. Any person who neglects to make and subscribe the declaration required by this Act for the space of *three* months next after he has become a member of the local board shall be deemed to have refused to act, and *shall cease to* be a member of such local board, and his office as such shall thereupon become vacant.

This rule appears to deal with the case of a member who does not act and who does not make the declaration. Rule 70, *post*, deals with a member who acts without having made the declaration.
As to the casual vacancy which may arise under this rule, see rule 65, *post.*

Retirement of Members.

59. Subject as herein-after mentioned (*a*), *one third* of the number of members elected for the district, or if the district is divided into wards, one third of the number elected for each ward (being those who have been longest in office), shall go out of office on the *fifteenth of April* in each year.

(*a*) This exception appears to refer to rule 73, *post.*
(*b*) See rule 55, *ante*, p. 408.

60. The *order* in which the persons elected at the first election of a local board for a district constituted after the passing of this Act shall go out of office shall be regulated by the local board (*a*), and if the number of persons to be elected is not divisible by *three*, the proportion

Sched. 2. Part 1. to go out of office in each year shall be regulated by the local board so that as nearly as may be one third shall go out of office in each year (*b*).

(*a*) That is, the local board are to determine the individuals who are to go out of office in the first and second years. The residue will go out in the third year.

A local board consisted of nine members, one third to go out of office on the 31st March, 1855. Three of the members had ceased to be members by reason of non-attendance, and the local board on that day selected them to go out of office. Three new members only were elected, and the court held the new board to be well constituted. *Howitt* v. *Manful*, 6 E. & B. 736; 25 L. J. Q. B. 411; 2 Jur. (N.S.) 883; 4 W. R. 612; 20 J. P. 387.

This provision, it must be observed, applies only to the case of the persons first elected. After the first board has been altogether changed, the local board has no authority in the matter, though some boards have continued to elect long after the third year.

(*b*) Thus, if there were eight members, the board might arrange thus: three for the first year, three for the second, and two for the third; or they might arrange the figures in any other combination. Apparently the arrangement may be made for every successive year.

61. No person elected shall in any case continually remain in office (without re-election) for more than *three years* (*a*): Provided that if the number of persons to be elected for any ward is less than *three*, the persons elected shall go out of office on the *fifteenth of April* in such year or years as the local board may, with the sanction of the Local Government Board, determine (*b*).

(*a*) Though it is contemplated that a member will always be entitled to hold office for one year at least, it is not so provided in terms.

(*b*) It does not appear why there should be this difference in regard to wards as distinguished from cases where there are no wards, except that the Local Government Board assign the number of members for each ward. See rule 6, *ante*, p. 392.

62. Before the *fifteenth of April* in each year a number of persons equal to the number of retiring members shall be elected in manner provided by this schedule, and so many others as may be necessary to complete the full number of the local board in respect of which the election is held.

See as to this date, rule 55, *ante*, p. 408, and rule 59, *ante*, p. 409. This paragraph requires that at the annual election the ordinary vacancies and the casual vacancies then existing shall be filled up. Any failure duly to elect at the time will be met by the provision in rule 65, *post*. A total failure to elect may be dealt with by *mandamus*. The case of the lapse of a local board is provided for by Part II. of this schedule, *post*.

63. Any person who has ceased to be a member is re-eligible (if qualified).

Disqualification of Members (*a*).

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64. Any member who ceases to hold his qualification (*b*), or becomes bankrupt, or submits his affairs to liquidation by arrangement, or compounds with his creditors (*c*), or is absent from meetings of the local board for more than six months consecutively (unless in case of illness) (*d*), or accepts or holds any office or place of profit under the local board of which he is member, or in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof, or of any work done under the authority of this Act in or for the district (*e*), shall, except in the cases next herein-after provided, cease to be such member, and his office as such shall thereupon *become vacant* (*f*).

Provided that no member shall vacate his office—

By reason of his being interested in the sale or lease of any lands (*g*) or in any loan of money to the local board; or

By reason of his being interested in any contract with the local board as a shareholder in any joint stock company (*h*), but he shall not vote (*i*) at any meeting of the local board on any question in which such company are interested, save that in the case of a water company, or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the Local Government Board (*k*).

(*a*) This rule deals with disqualification arising after election.

It is to be observed that the disqualifications mentioned in this rule are similar to those contained in the Municipal Corporations Act, and in the Commissioners Clauses Act, 10 & 11 Vict. c. 16, s. 9. But there are other disqualifications than those herein mentioned. For example, a member of a local board may be disqualified by conviction under the Corrupt Practices Act. The disqualifications under the Bankruptcy Act, 1883, are stated in note (*c*), *infra*.

(*b*) For the qualification of a member of the board, see rule 3, *ante*, p. 390.

(*c*) The Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 32, provides that where a debtor is adjudged bankrupt, he shall, subject to the provisions of that Act, be disqualified from being elected to or holding or exercising the office of member of a sanitary authority. This disqualification, however, is to be removed and to cease if and when the adjudication in bankruptcy is annulled, or the bankrupt obtains from the court his discharge with his certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate is subject to appeal.

As to composition or schemes of arrangement with creditors, see sections 18, 23, of the same Act. Section 170 abolishes liquidations and compositions under the Act of 1869, after the 25th August, 1883, except with the consent of the court or registrar. Note that the words of the rule are "compounds with his creditors." A private composition was held not to disqualify under 5 & 6 Will. 4, c. 76, s. 52, which provided for the disqualification of a councillor who should "compound by deed" with his creditors, nor under the Debtors Act, 1869, which extended the provisions of the former Act to every composition, &c.,

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under the Bankruptcy Act, 1869. *Aslatt* v. *Southampton* (*Corporation of*) 16 Ch. D. 143; 50 L. J. Ch. 31; 43 L. T. (N.S.) 464; 29 W. R. 117; 45 J. P. 111.

(*d*) This means calendar months. See 13 & 14 Vict. c. 21.

(*e*) Must the office be one of profit? In other words can a member gratuitously hold any appointment under the board. In the Municipal Corporations Act, 1882, section 12, where similar words occur, there are exceptions in favour of the mayor and sheriff, whose offices are not offices of profit. Reference on this point may be made to *Delane* v. *Hillcoat*, 9 B. & C. 310, when the facts were as follows. By 3 Geo. 4, c. 126, s. 65, no trustee of any turnpike road shall enjoy any office or place of profit under any Act in the execution of which he shall have been appointed or shall act as trustee, and if any person having been appointed a trustee, shall, without having first duly resigned such office, hold any such office or place, he shall forfeit £100. Held, that a trustee who accepted the office of treasurer, but allowed another to receive the rents of the tolls and never made a profit, was liable to the penalty if the office yielded any profit.

It is to be observed that the text does not disqualify a member from being a candidate for an office. It only defeats his office of member of the board if he accepts or holds an office under the board. Therefore, if elected to the office, he becomes disqualified as a member. See *Eales* v. *Cumberland Black-lead Mining Company*, 30 L. J. Ex. 141; 7 Jur. (N.S.) 169; 3 L. T. (N.S.) 861; and see per BRETT, M. R., in *Hunnings* v. *Williamson*, *infra*.

Upon the question what interest in a contract is sufficient to disqualify, the following cases may be referred to. A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on the road, to be used in the performance of the works, and it was held that he was liable to a penalty as being interested in a contract with the turnpike trustees under a clause similar to that in the text. *Towsey* v. *White*, 5 B. & C. 125. The local board of Southampton, being the town council, having contracted with a person to supply iron railings, an alderman of the borough sold, in the way of his trade, to the contractor, some iron to enable him to complete his contract. It was held that the alderman was not interested in the contract. *Le Feuvre* v. *Lancaster*, 3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894; 18 J. P. 198. In 1846 F. was elected a town councillor, and he was re-elected in 1849. In 1843 he had undertaken to bind the books and documents of the council. No sum was fixed for his remuneration, but in 1849, while he was still engaged in his undertaking, he agreed to complete it for £150, the amount of his disbursements. There was no contract under seal. In July, 1849, he received £50 on account. It was held that he was interested in a contract with the council, though he might not have been able to enforce it for want of the corporate seal. *Reg.* v. *Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1046. It was said by ALDERSON, B., that a somewhat similar clause in a local Act did not apply to a contract made before the defendant became a member, though he had not received the money. He said also that "a single bargain, as if the commissioners bought a brush in a shop, would not disqualify the seller, though the price had not been paid." *Woolley* v. *Kay*, 1 H. & N. 307; 25 L. J. Ex. 351; 20 J. P. 776. In *Nicholson* v. *Fields*, 7 H. & N. 810; 31 L. J. Ex. 233; 10 W. R. 304, the evidence against a commissioner for being concerned in a contract with the commissioners, consisted of an invoice addressed to the commissioners for several separate quantities of lime supplied at different times during four months. It was held that this was sufficient evidence. This decision was followed in *Lewis* v. *Carr*, 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. (N.S.) 44; 24 W. R. 940. In that case, BRAMWELL, B., referring to the corresponding clause in the Municipal Corporations Act, said: "I think if a shilling's worth of stationery were bought of an alderman, there would be a contract between the corporation and that alderman." But in another place he added, "I doubt very much whether the legislature intended these words to comprehend the case when there was a trifling dealing over the counter, and when the price of

the articles was well-known." When a member of a local board received payment of £19 19*s.* 9*d.* from the board, to reimburse him for work done for the surveyor of the board, the work consisting of the use of men and horses at intervals during two years, it was held that he was disqualified under the above rule. *Fletcher* v. *Hudson*, 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. (N.S.) 125; 30 W. R. 349; 46 J. P. 372. The brother of the defendant entered into a contract with a vestry constituted under the Metropolis Management Act, 1855, and in order to enable him to carry it out, borrowed money from the defendant, who by way of security took an assignment of the contract. Afterwards, the defendant was elected a member of the vestry. It was held that the defendant was interested in a contract with the vestry. *Hunnings* v. *Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. (N.S.) 361; 32 W. R. 267; 48 J. P. 132. As to the liability of a member for contracts entered into without his knowledge or against his orders, see *Miles* v. *McIlwraith*, 8 App. Cas. 120; 31 W. R. 591; 48 L. T. (N.S.) 689; 52 L. J. M. C. 17.

The cases decided with reference to the liability of guardians for supplying goods and materials for the use of the workhouse or the relief of the poor may also be consulted. These will be found collected in *Archbold's Poor Law*, at p. 102.

Quære whether a contract entered into by a member with the local board will be void. It has been held under the Companies Clauses Act, 8 & 9 Vict. c. 16, s. 85, which provides that a person interested in a contract shall be incapable of being a director, and that a director shall not be capable of being interested in a contract, &c., that if a director enters into a contract with the company he is incapacitated from continuing a director, but that the contract is not avoided. *Foster* v. *Oxford, &c., Railway Company*, 13 C. B. 200. The question whether a contract between commissioners and an individual commissioner was void as illegal was raised, but not decided, in *Webb* v. *Herne Bay Commissioners*, *ante*, p. 276, when debentures given by the commissioners in respect of the contract were held to be good in the hands of a *bonâ fide* holder. It is probable, however, that the contract as between the board and the member would be held to be void. See *Barton* v. *Piggott*, L. R. 10 Q. B. 86; 44 L. J. M. C. 5; 31 L. T. (N.S.) 404; 23 W. R. 233; 39 J. P. 454.

As to whether in equity he could be compelled to pay the board any profit which he might have made, see *Imperial Mercantile Credit Association* v. *Coleman*, L. R. 6 H. L. 190; 42 L. J. Ch. 644; 29 L. T. (N.S.) 1; 21 W. R. 696.

(*f*) Note that the office *becomes vacant* without more. Under the Municipal Corporations Act, it is necessary that the council should declare the office vacant; if they do not do so, the disqualification ceases when the member ceases to have an interest in the contract. See *Hardwick* v. *Brown*, L. R. 8 C. P. 406; 28 L. T. (N.S.) 502; 21 W. R. 639; 37 J. P. 407; *Reg.* v. *Welshpool (Mayor of)*, 35 L. T. (N.S.) 594; *Lewis* v. *Carr*, *supra*. Under the provisions in the text, the member cannot after being interested in the contract, sit and act as a member without exposing himself to an action for penalties under rule 70, *post*. *Fletcher* v. *Hudson*, *supra*.

(*g*) A member is not disqualified by reason of a lease of the board to him of a sewage farm, containing covenants on the part of the board to supply, and on his part to use on the premises, the sewage of the district. *Reg.* v. *Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T. (N.S.) 688; 28 W. R. 596; 44 J. P. 507. Per LUSH, J.: "The words are intended to cover a lease of a farm for agricultural and sewage purposes, whether made by or to the board."

(*h*) This exception now applies to every joint stock company however formed, whereas 21 & 22 Vict. c. 98, s. 25, applied only to such companies when formed under the Joint Stock Companies Acts or any of them.

(*i*) It is probable that if the member voted, he would be liable to the penalty imposed by rule 70, *post*. But if not, as he will violate a public statute if he vote wilfully, he will be guilty of a common law misdemeanour, and be subject

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to an indictment accordingly. As to the vote itself, apparently it will be void, and any motion depending upon it will fail unless the proviso to rule 70, *post*, applies. If, however, the vote be merely given upon a motion not depending upon its validity, and the motion is acted upon for the entering into a contract, the contract will not be avoided. See *Foster* v. *Oxford, &c., Railway Company, supra.*

(*k*) Under this section it would seem that dispensation may be available either before the vote is given, which will be the most expedient course, or after it has been given, so as to give effect to it or to prevent a prosecution.

Casual Vacancies.

65. Any casual vacancy occurring by death, *resignation* (*a*), disqualification, *failure duly to elect members* (*b*), or otherwise in a local board, shall be filled up by the local board out of qualified persons within *six weeks* (*c*), or within such further period as the Local Government Board may by order allow; but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

In the event of a casual vacancy, or of an ordinary vacancy which ought to have been filled up at a previous election being filled up at an annual election, if there is a poll, the member who has been elected by the fewest votes shall be deemed elected to fill such vacancy; if there is no poll, the member to be deemed to be elected to fill such vacancy shall be determined by lot (*d*).

(*a*) This word leads to the inference that a member can resign, but no express power of resignation is given by the statute; and as the office is an onerous one, according to the general law it could not have been relinquished. No specific form of resignation is prescribed. It should be in writing, addressed to the chairman of the local board.

A resignation can only take place when there has been a valid election. *Reg.* v. *Blizard, ante*, p. 400. And it appears that a person who has become disqualified cannot resign. *Hardwick* v. *Brown, ante*, p. 413. Indeed, as already noticed in the note to the last preceding rule, on disqualification the office becomes *ipso facto* vacant.

(*b*) These words are new, and provide for the failure at the annual election through neglect of nomination, or failure in the regular conduct of the election. The successive failures to elect will work a lapse of the board, which is provided for in Part II. of this Schedule, *post*.

(*c*) The provision as to the time in 21 & 22 Vict. c. 98, s. 24, was presumed to be directory; but it seems otherwise according to the provision in the text, as the default within the time stated is provided for.

(*d*) This is a new provision, and in some respects may obviate the inconvenience which would have resulted from *Reg.* v. *Rippon*, 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. (N.S.) 444; 24 W. R. 363; 40 J. P. 536. Thus four members having gone out of office, three at the expiration of their term of office, and one by resignation before the end of his term, four new members were elected at one election without distinction. Neither in the notice of election nor in the voting papers was any distinction made between the regular vacancies and the casual vacancy. It was held that the election was invalid.

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66. Whenever the day appointed for the performance of any act in relation to any election is a Sunday, Christmas Day, or Good Friday, a *Bank holiday* (*a*), or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.

(*a*) These are provided for in 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13. They are Easter Monday, Monday in Whitsun week, the first Monday in August, the 26th December, if a week day, and if not, the 27th December. Most of these days cannot affect the annual elections, but it may be different as regards the first elections.

67. The necessary expenses attendant on any election, and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the local board (*a*), shall be paid out of the general district rates levied under this Act.

(*a*) Upon these words in 11 & 12 Vict. c. 63, s. 30, it was held that the local board had complete discretion as to the sum they might allow. *Ex parte Metcalfe*, 6 E. & B. 287; 20 J. P. 277; 2 Jur. (N.S.) 1245. Hence the amount cannot be questioned by the auditor, whatever may be his opinion thereon.

68. If the returning officer refuses or *neglects* (*a*) to comply with any of the provisions of this schedule relating to elections, he shall be liable to a penalty not exceeding *fifty pounds* (*b*); and any person employed for the purposes of any such election by or under the returning officer who is guilty of any such *neglect* or refusal shall be liable to a penalty not exceeding *five pounds* (*b*).

(*a*) This penalty is incurred by mere neglect, without showing that it was wilful or corrupt. See *King* v. *Burrell*, 12 A. & E. 460; 9 L. J. Q. B. 337; *Hunt* v. *Hibbs*, 5 H. & N. 123; 29 L. J. Ex. 222; 24 Jur. 78; 8 W. R. 238; 24 J. P. 118. In *Reg.* v. *Lofthouse*, *ante*, p. 404, it was stated that erroneous entries in the voting papers might subject the returning officer to a penalty. If the chairman, knowing a voter to be qualified, maliciously refuses to receive his voting paper, he will be liable to an action at the suit of the voter; but if he reject the vote *bonâ fide* believing the voter not to be qualified, he is not liable, though his belief may be erroneous. *Tozer* v. *Child*, 6 E. & B. 289; 2 Jur. (N.S.) 928; 26 L. J. Q. B. 151; 21 J. P. 516. It has been held with respect to the duties of a returning officer under the Ballot Act, 1872, that when such duties are ministerial only, an action for the breach of them will lie at the suit of a party aggrieved, who has thereby lost the election, without malice or want of reasonable care on the part of the defendant. *Pickering* v. *James*, L. R. 8 C. P. 489; 42 L. J. C. P. 217; 29 L. T. (N.S.) 210; 21 W. R. 786; 37 J. P. 679.

(*b*) See, as to the recovery of these penalties, section 251, *ante*, p. 289. See also section 253, *ante*, p. 292, as to the persons who may institute proceedings to recover the penalties. A chairman of a local board was charged with

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neglecting to deliver the voting papers to the local board (see rule 253, *ante*, p. 407), and L. was the prosecutor, who, though a member of the board, had not been a candidate at the election, and the persons returned at such election were properly elected. L. had not obtained the consent of the Attorney-General or of the local board to prosecute. (See section 253, *ante*, p. 292.) It was held that as L. was not a party aggrieved, the justices had no jurisdiction to hear and determine the information. *Reg.* v. *Blanshard*, 30 J. P. 280.

69. Any person who (*a*)—

Fabricates (*b*) in whole or in part, or alters, defaces, destroys, abstracts, or purloins any voting paper, or

Personates any person entitled to vote at any election (*c*), or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote (*d*), or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfully authorized so to do,

shall be liable to a penalty not exceeding *twenty pounds* (*e*), or, in the discretion of the court, to imprisonment with or without hard labour for any period not exceeding three months.

(*a*) This section is taken from 14 & 15 Vict. c. 105, s. 3, with reference to the election of guardians, though the language is slightly altered. It is well to state that several prosecutions have taken place upon that section, and that persons have been convicted of offences under it. At the Spring Assizes for Yorkshire in 1858 three persons were convicted before BYLES, J., of a common law offence for conspiring to defeat the due election of guardians by causing forged proxy appointments to be issued and acted upon at such election, and were sentenced to imprisonment. *Reg.* v. *Beckwith and others.* The offences mentioned in this section are to be deemed illegal practices within the meaning of the Municipal Corporations (Corrupt Practices) Act, 1884, *post*, but without prejudice to the punishment under this rule of persons guilty of such offences. 47 & 48 Vict. c. 70, s. 36.

(*b*) At an election of guardians a voter's wife told W. that she had authority from her husband to fill up his voting paper, and W. thereupon caused her to put her mark on the voting paper, he putting the voter's initials opposite to the candidate's name and attesting the paper, which was received as if duly marked, &c., by the voter himself. W. having been convicted under 14 & 15 Vict. c. 105, s. 3, of unlawfully fabricating a voting paper, it was held that there was no evidence to justify the conviction. *Wickham* v. *Phillips*, 47 J. P. 612. And see *Aberdare Local Board* v. *Hammett*, *infra*.

(*c*) When the person who should have been so entitled is dead and he is personated at the election, the case is not provided for by this section. *Whiteley* v. *Chappell*, L. R. 4 Q. B. 147; 38 L. J. M. C. 51; 17 W. R. 175; 19 L. T. (N.S.) 355; 33 J. P. 244.

(*d*) Where a person signed the name of a voter to a paper with the consent of the voter's wife, but without his knowledge, and believing that he might do so, it was held that he was not liable to a penalty under the corresponding enactment in 21 & 22 Vict. c. 98, s. 13. *Aberdare Local Board* v. *Hammett*, L. R. 10 Q. B. 162; 44 L. J. M. C. 49; 32 L. T. (N.S.) 20; 39 J. P. 69.

(*e*) See, as to the recovery of the penalty, section 251. Note that a candidate at an election is a party aggrieved by the mere fabrication of a voting paper, so as to be entitled to lay an information under this rule without the consent of the Attorney-General under section 253, *ante*, p. 292. *Verdin* v. *Wray*, 2 Q. B. D. 608; 46 L. J. M. C. 170; 35 L. T. (N.S.) 942; 25 W. R. 274; 41 J. P. 484.

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70. Any person who, not being duly qualified to act as member of the local board (*a*), or not having made and subscribed the declaration required of him by this Act (*b*), or being disabled from acting by any provision of this Act (*c*), acts as such member (*d*), shall be liable to a penalty of *fifty pounds*, which may be recovered by *any person* (*e*), with full costs of suit, by action of *debt* (*f*); in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member (*d*); and the burden of proving qualification, and the making and subscription of the declaration, or of negativing disqualification by reason of non-residence or not being seised or possessed of the requisite real or personal estate, or both, shall be on the defendant (*g*).

But all acts and proceedings of any person disqualified, disabled, or not duly qualified, or who has not made and subscribed the declaration required by this Act, shall, if done *previously* to the recovery of the penalty mentioned in this Act, be valid and effectual to all intents and purposes (*h*).

(*a*) See rule 3, *ante*, p. 386.

(*b*) See rule 56, *ante*, p. 408.

(*c*) See rule 64, *ante*, p. 411. A member who, having been concerned in a contract with the board, has thereupon ceased be such member by force of rule 64, is a person disabled from acting as a member within the meaning of this rule. So held in *Fletcher* v. *Hudson* (No. 2), 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. (N.S.) 125; 30 W. R. 349; 46 J. P. 372, by BRETT and COTTON, L. JJ., BRAMWELL, L. J., dissenting. It applies also to a member who has been elected while interested in a contract, for upon being so elected he ceases to be a member the moment after he is elected. *Hunnings* v. *Williamson, infra.*

(*d*) In an action for penalties under the provisions of the Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, ss. 54, 60, corresponding respectively to this rule and Schedule I., rule 10, *ante*, p. 393, that an attendance book of the members, signed by the defendant, and the minute book of the vestry containing his name as a member in attendance, were evidence of the defendant's having acted as a member. *Hunnings* v. *Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. (N.S.) 361; 32 W. R. 267; 48 J. P. 132.

(*e*) In *Rochfort* v. *Atherley*, 1 Ex. D. 511, it was held that an action under this section could not be brought by a person other than a party aggrieved without the consent of the Attorney-General under section 253, *ante*, p. 292. And see *Smith* v. *Fieldhouse*, 35 L. T. (N.S.) 602. These cases have, however, been overruled by the Court of Appeal in *Fletcher* v. *Hudson*, 5 Ex. D. 287; 49 L. J. Ex. 793; 43 L. T. (N.S.) 404; 45 J. P. 5. The action may therefore be brought by any person whatever, whether aggrieved or not, and without the consent of the Attorney-General. See the notes to section 253, *ante*, p. 292.

(*f*) There are no distinct forms of action now, and therefore this description of the action is surplusage. In an action under this rule the plaintiff is not entitled to administer interrogatories or to discovery of documents. *Hunnings* v. *Williamson* (No. 1), 10 Q. B. D. 459; 52 L. J. Q. B. 273, 400; 48 L. T. (N.S.) 392, 581; 31 W. R. 924; 47 J. P. 390.

(*g*) This provision and the following one are contrary to the former spirit of the English law, but they have crept into some recent statutes. Where in an action for a penalty upon a similar provision in a local Act, the issue being only that of want of qualification, the defendant proved his qualification, but

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not that he had subscribed the oath, and it was held that he had proved enough, and was not bound to prove such subscription. *Tupper* v. *Newton*, 14 C. B. 114.

(*h*) See also Schedule I., rule 9, *ante*, p. 387, as to vacancies in the board or defect in the election.

As to Local Boards (*a*) *established before the passing of the Local Government Act*, 1858.

71. Where the district of a local board established under the Public Health Act, 1848 (*b*), before the passing of the Local Government Act, 1858, comprises the whole or any part of a borough or boroughs, and also parts not within the boundaries of any such borough, the following provisions shall have effect; (namely)

(a.) Each person *selected* by the council of any such borough out of their own number shall be a member of the local board with which he is selected to act so long as he continues without re-election to be member of the council from whom he was selected, and no longer; and a declaration shall not be required to be made by any person so selected:

(b.) Each person selected by any such council otherwise than out of their own number (*c*) shall be a member of the local board with which he is selected to act for *one year* from the date of his selection, and no longer:

(c.) In case of any *vacancy* in the number *selected*, some other *qualified* person (*d*) shall be selected by the council by whom the person causing the vacancy was selected within *one month* after the occurrence of the vacancy (*e*):

(d.) The meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same (*f*):

(e.) If any person is both selected and *elected* (*g*) to be a member of any such local board, he shall, within three days after notice thereof from the clerk (*h*), choose, or, in default of such choice, the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve; and immediately on such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

(*a*) Note that this term does not include boroughs which are urban sanitary authorities and act by their council.

(*b*) 11 & 12 Vict. c. 63, s. 10, enabled local boards to be established out of the whole of a borough, or part of a borough, or parts of two or more boroughs, and out of part of the extra municipal district adjoining; and the board was constituted of members partly selected by the town council, and partly of members elected. The proceedings were required to be conducted in the manner described in the text. This prevailed until 27 & 28 Vict. c. 98, under which there was no selection in the case of a local board constituted under it. There are but very few local boards constituted in the manner above described.

(*c*) A person to be thus selected by the town council was required to be qualified as a town councillor, and it is presumed that this qualification continues to be necessary, though there is some difficulty in eliciting this from these schedules or any other part of this Act.

The person so selected must make a declaration according to rule 56, *ante*, p. 408, which differs from the declaration required to be made by a town councillor under 45 & 46 Vict. c. 50, sched. 8.

(*d*) See the preceding note.

(*e*) This provision is presumed to be directory, for the Local Government Board are not referred to as in rule 65, *ante*, p. 414, and there may be no meeting of the council within the time. See *Reg.* v. *Griffiths*, 7 E. & B. 953; 21 J. P. 390.

This month means calendar month. See 13 & 14 Vict. c. 21.

(*f*) The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 242, and sched. 9, provides that in the Public Health Act, 1875, a reference to that Act shall be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it. For the provisions now in force as to meetings of the council, see 45 & 46 Vict. c. 50, s. 22, and sched. 2.

(*g*) See the next rule.

(*h*) See sections 266, 267, *ante*, p. 314, as to this notice. The clerk here referred to must be the clerk of the local board, though the statute does not contain any provision as to his knowledge of the selection by the town council.

72. Elective members of any local board established under the Public Health Act, 1848, before the passing of the Local Government Act, 1858 (*a*), shall be elected by such owners of property and ratepayers and in such manner as in this schedule mentioned; and the provisions of this schedule (with the exception of the provisions relating to the *number* (*b*) and *qualification* of members) shall apply accordingly.

(*a*) That is, between 31st August, 1848, and 2nd August, 1858.

(*b*) The number of the members and their qualification were settled by the order in council, or by the provisional order confirmed by Parliament, and have been continued since. These are to remain until they are altered under the power contained in section 297, sub-section (5), *ante*, p. 347.

Where the board is wholly elective, the period of the year of office will commence as provided in rule 55, *ante*, p. 408; but it is not clear what is to be done in the case where the board is partly selected and partly elective. The selected members are provided for in rule 71 (a), but nothing is stated as to the elective members. Probably they were intended to be dealt with in rule 73, and, if so, their term of office will commence on April 15th, whatever may be the case with their selected colleagues.

Temporary Provisions.

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73. *All members of local boards existing at the time of the passing of this Act shall, notwithstanding any provision of any Act or order confirmed by Parliament, continue to hold office till the fifteenth day of April, one thousand eight hundred and seventy-six; and the next election of members of such local board shall be held in accordance with the provisions of this schedule.*

74. *The provisions of section twenty-six of the Sanitary Law Amendment Act*, 1874, *shall be deemed not to have been compulsory in the case of the first election of members of any local board elected after the passing of that Act, and before the passing of this Act; and all elections held or purporting to have been held in accordance with such provisions before the passing of this Act, shall be deemed to have been duly held, and to be valid for all purposes.*

These two rules (73 and 74) have been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

Oxford.

75. Nothing in the rules in this schedule shall apply to the local government district of Oxford.

See section 342, *ante*, p. 381.

(II.) Proceedings in case of Lapse of Local Board.

1. Where any local board lapses through its members ceasing to hold office, and failure to elect new members in manner by this Act provided (*a*) any mortgagee or other person entitled to any principal or interest on any mortgage of rates made by such local board may, without prejudice to any other mode of recovery, apply for the appointment of a receiver (*b*) to a *court of summary jurisdiction* (*c*). The said court may, by writing under their *hands* (*d*), appoint a person to *make*, levy, and collect the whole or a competent part of the *rates* liable to the payment of the principal and interest in respect of which the application is made, and to recover all arrears of such rates until such principal and interest, together with the costs of the application and of collection, are paid; and on such appointment being made, all such rates, competent part thereof, and arrears, shall be paid to the receiver so

appointed, and shall be rateably apportioned by him among the mortgagees or other persons entitled to the same.

(*a*) There must be a total failure of the whole board, or, at least, a failure so far that there is no longer a *quorum* to act.

(*b*) See section 239, *ante*, p. 276. There is no limitation of the amount here as in that section.

(*c*) See the definition in section 4, *ante*, p. 15.

(*d*) In section 239 the seals also are required. Apparently all the members of the court present at the time are to sign the appointment. See the note to section 239.

Note that under this rule the receiver will *make* the rate as well as receive it. He must confine himself to the rates charged with the mortgage.

2. In the case of any lapse of a local board, the owners and ratepayers of the district may, by resolution passed in manner provided by Schedule III. to this Act (*a*), determine to elect, and may accordingly proceed to the election of a new local board in manner provided by this schedule, and the result of such election shall be signified to the Local Government Board by the returning officer; and all the powers, rights, duties, property, and liabilities of the lapsed board shall attach to the new board as if there had been no lapse before the election thereof, and from the date of the completion of such election all powers of any receiver to *make* rates under this schedule shall determine (*b*).

If no election takes place in pursuance of this provision within three months from the date of the lapse of the board, the Local Government Board may by order (*c*) dissolve the district, and declare it to be a rural district, or to be included in any adjoining rural district; and from and after a day named in such order all such powers, rights, duties, property, and liabilities of the lapsed board as the Local Government Board may direct shall with respect to the dissolved district attach to the rural authority named in the order, and such property shall be held by the rural authority for the benefit of the dissolved district (*d*).

The Local Government Board may by order (*c*) determine any question as to the fact of a board having lapsed, or as to the date of the lapse of any local board.

(*a*) See *post*.

(*b*) Note that the receiver's power to *collect* the rates is not taken away. If the new board do not make the necessary rates, they may be compelled to do so by *mandamus*.

(*c*) This order will be conclusive. See section 295, *ante*, p. 345. No provisional order will be required as under section 270, *ante*, p. 325.

(*d*) The rural sanitary authority will in this event be liable to process to compel them to make the requisite rate for the payment of the mortgages, unless it should be held that the power given under rule 1, *supra*, revives.

SCHEDULE III.

Rules as to Resolutions of Owners and Ratepayers (*a*).

Sched. 3.

1. For the purpose of passing a resolution of *owners* (*b*) and *ratepayers* under this Act (*c*), a meeting shall be summoned on the requisition of any twenty ratepayers *or* owners, or of any twenty ratepayers *and* owners (*d*), resident in the district or place with respect to which the resolution is to be passed.

(*a*) Such a resolution is required under sections 166, 216, 272, also under the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 9, which provides for parts of parishes excluded from urban districts, and enables the owners and ratepayers to decide that such part shall be highway parishes.

(*b*) See the definition of *owner* in section 4, *ante*, p. 6; and of *ratepayer* in Schedule II., rules 10, 11.

(*c*) These words appear to restrict the rules of this schedule to meetings under this Act. But this Act is, according to section 313, *ante*, p. 366, to be read in any other previous Act which refers to any of the Sanitary Acts. Hence the rules will apply to the Municipal Corporations (Borough Funds) Act, 1872, 35 & 36 Vict. c. 91, printed in the Appendix.

(*d*) There must be twenty persons made up of ratepayers and owners indiscriminately. See section 273, *ante*, p. 329. As to the *residence*, see the notes to Schedule II., rule 40, *ante*, p. 402.

2. The summoning officer of such meeting shall be—

In boroughs, the *mayor*;

In improvement Act districts, the *chairman* of the improvement commissioners;

In local government districts, the *chairman* of the local board;

In places situated in any rural district or districts and having known and defined boundaries (*a*), the churchwardens (*b*) or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisdiction; or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by order of the Local Government Board (*a*), the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room (*c*).

(*a*) See section 272, *ante*, p. 327, and the notes thereon.

(*b*) It is presumed that the word churchwardens will include *chapelwardens* where the place is a chapelry. But it is very doubtful whether the church-

wardens of a *parish* can act for a part of that parish, such as a township. The churchwardens of an ecclesiastical district formed under 6 & 7 Vict. c. 57, are included in the term. *Reg.* v. *Northowram and Clayton*, L. R. 1 Q. B. 110; 7 B. & S. 110; 35 L. J. Q. B. 90; 30 J. P. 181.

(*c*) To obtain this appointment there must be a communication in writing to the board, who must be satisfied of the inability or refusal of the proper officer to perform the duties. When one of these officers is a candidate he should refuse to act, as he cannot return himself.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution *not being passed* (*a*), of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a *court of summary jurisdiction* (*b*).

(*a*) Provision is made in rule (8), *post*, for the costs when the resolution is passed.

(*b*) See the definition in section 4, *ante*, p. 15.

4. The summoning officer shall, on such requisition *as aforesaid* (*a*), fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place;

By causing such notice to be affixed to the principal doors of every church and chapel (*b*) in the place to which notices are usually affixed.

(*a*) This officer must satisfy himself of the sufficiency and legality of the requisition. It is to be noticed that he has absolute discretion as to the time and place of meeting.

(*b*) The church and chapel must mean, according to the interpretation of similar words in 1 Vict. c. 45, church and chapel of the Established Church. See note on Schedule II., rule 25, *ante*, p. 398. Note that the mode of publication is here prescribed; in other sections of the Act there is no prescribed mode.

5. The summoning officer shall be the *chairman* of the meeting unless he is unable or unwilling to preside (*a*), in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from *time to time* (*b*).

(*a*) These words remove the inconsistency which arose from 21 & 22 Vict. c. 98, s. 13, under which the meeting were to choose their chairman, but if a poll were demanded, the summoning officer had to conduct it. *Ex parte Littleborough Local Board*, 22 L. T. (N.S.) 437; 34 J. P. 469. Now the summoning officer will preside throughout unless unable or unwilling.

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(*b*) In 21 & 22 Vict. c. 98, s. 13, the adjournment was to be *from day to day*, and this was interpreted to mean from one day to the next day. By the words of the text the adjournment may be to days at any intervals. But though the meeting must determine whether the adjournment shall take place, the decision as to when the adjourned meeting shall be held and when the poll shall be taken rests with the chairman. *Reg.* v. *D'Oyley*, 12 A. & E. 139; 9 L. J. M. C. 113, 117.

6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided, that if any owner or ratepayer demands (*a*) that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act (*b*); except that in districts or places where there is no register of owners and proxies under this Act (*c*), any owner or proxy shall be entitled to have a voting paper delivered to him if *at least fourteen days* (*d*) before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act, to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply (*e*).

For the purposes of such poll the *summoning officer* shall be the returning officer (*f*), and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this schedule.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same (*g*), a declaration by the chairman shall, in the absence of proof to the contrary (*h*), be sufficient evidence of the decision of such meeting.

(*a*) This gives to any owner or ratepayer the right to demand a poll whether the meeting wish it or not. Such a right exists as incident to similar meetings at common law, such as meetings of vestry or meetings under the Public Libraries Acts. *Reg.* v. *St. Matthew, Bethnal Green*, 32 L. T. (N.S) 558; 39 J. P. 502; *Reg.* v. *Wimbledon Local Board*, 8 Q. B. D. 459; 51 L. J. Q. B. 219; 46 L. T. (N.S.) 47; 30 W. R. 400; 46 J. P. 292.

(*b*) See the several rules of the schedule, *ante*.

(*c*) See Schedule II., rule 19, *ante*, p. 396.

(*d*) This passage agrees with Schedule II., rule 31, *ante*, p. 399, except that the words *at least* are not therein. They signify that both days are to be excluded. See *Reg.* v. *Justices of Salop*.

(*e*) See Schedule II., rule 66, *ante*, p. 415.

(*f*) It is presumed that this will not be the case when the summoning officer has been unable or unwilling to preside, and a chairman has been chosen in his place.

(*g*) When is this withdrawal to take place? Apparently before the papers are sent out. Sched. 3.

(*h*) This declaration is not absolutely conclusive, so that defaults which vitiate the proceedings may be shown by persons interested who dispute the result.

7. A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

See as to the publication of the notices, rule (4), *ante*, and the notes thereon. The requisitions of this rule are not conditions precedent to the validity of the resolution, or to its being acted upon. No notice is required to be given of the rejection of the resolution, though it will be well if the summoning officer do communicate it to the Local Government Board in any case where they have taken action in the matter.

8. Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a *local government district* (*a*), all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district (*b*); in the case of a resolution so passed by owners or ratepayers in any urban district (*c*), such cost shall be paid out of the fund or rate applicable by the urban authority to the *general purposes* of this Act.

(*a*) See section 272, *ante*, p. 327.

(*b*) Therefore these costs will be payable by the local board as soon as they shall be in funds after their election.

(*c*) This passage applies to resolutions which do not relate to the constitution of the district, such as those referred to in note (*c*) to rule (1), *ante*, p. 422.

(*d*) In a borough this will be the borough fund or borough rate. In any other urban district, it will be the general district rate. If there be any special rate which has been charged in any such district with the general expenses of this Act, these costs will of course be payable out of it. As to the costs of solicitors employed in these proceedings, see section 249, *ante*, p. 288.

SCHEDULE IV.

FORMS.

FORM A.

Form of Notice requiring Abatement of Nuisance (*a*).

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To [*person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health Act, 1875, the [*describe the local authority*], being satisfied of the existence of a nuisance at [*describe premises or places where the nuisance exists*], arising from [*describe the cause of nuisance, for instance*, want of a privy or drain ; *or for further instance*, a ditch or drain so foul as to be a nuisance or injurious to health ; *or for further instance*, swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [*state any things required to be done or works to be executed*] (*b*).

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of local authority

(*a*) See section 94, *ante*, p. 97.

(*b*) See section 96, note (*c*), *ante*, p. 102, and especially the cases of *Ex parte Whitchurch*, and *Ex parte Saunders*, there cited.

FORM B.

Form of Summons (a).

Summons.

To the owner or occupier (*b*) of [*describe premises*], situated at [*insert such a description as may be sufficient to identify the premises*], *or* to *A.B.* of . Sched. 4. Forms.

County of [*or* borough of *&c. or* district of *or as the case may be*] to wit.

You are required to appear before [*describe the court of summary jurisdiction*], at the petty sessions [*or* court] holden at on the day of next, at the hour of in the noon, to answer the complaint this day made to me by that in or on the premises above mentioned [*or* in or on certain premises situated at No. in the street in the parish of *or such other description or reference as may be sufficient to identify the premises*], in the district, under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A.B.* [*or in case the nuisance be discontinued, but likely to be repeated, say*, there existed recently, to wit, on or about the day of on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last-mentioned day been abated or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under my hand and seal this day of 18 .

J.S. (L.S.)

(*a*) See section 95, *ante*, p. 101.
(*b*) See section 267, note (*e*), *ante*, p. 315.

FORM C.

Form of Order for Abatement or Prohibition of Nuisances (a).

To the owner [*or* occupier] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*], *or* to *A.B.* of (*b*)

County of [*or* borough, *&c.* of *or* district of *or as the case may be*].

WHEREAS on the day of complaint was made before Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin [*or as the case may be*], by that in or on certain premises situated at in the district under the Public Health Act, 1875, of [*describe the local authority*] the following nuisance

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then existed [*describing it*] ; and that the said nuisance was caused by the act or default of the owner [*or* occupier] of the said premises [*or* was caused by *A.B.*] [*If the nuisance have been removed say*, the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, *&c.*, and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.]

And whereas the owner [*or* occupier] within the meaning of the said Public Health Act, 1875 [*or* the said *A.B.*], hath this day appeared before us [(*or* me) *describing the court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say*, and whereas it hath been this day proved to our (*or* my) satisfaction that a true copy of a summons requiring the owner [*or* occupier] of the said premises [*or* the said *A.B.*] to appear this day before us (*or* me)] hath been duly served according to the said Act.

Now on proof here had before us [*or* me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or* occupier] of the said premises [*or* by the said *A.B.*], we [*or* I], in pursuance of the said Act, do order the said owner [*or* occupier *or A.B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed* (*c*), *as, for instance*, to provide for the cleanly and wholesome keeping of, *or*, to remove the animal so kept as to be a nuisance or injurious to health ; *or, for further instance*, to cleanse, whitewash, purify, and disinfect the said dwelling-house ; *or, for further instance*, to construct a privy *or* drain, *&c.* ; *or, for further instance*, to cleanse *or* to cover *or* to fill up the said cesspool, *&c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the court that the nuisance is likely to recur on the premises say* [And we] [*or* I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or* occupier, *or A.B.*], from [*here insert the matter of the prohibition, as, for instance*], from using the said house or building for human habitation until the same, in our [*or* my] judgment, is rendered fit for that purpose.]

In case the nuisance were removed before complaint, say, Now, on proof here had before us [*or* me] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [*or* I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*] ; and if this

order of prohibition be infringed, then we [*or* I] [*order on local authority to do works*].

Given under the hands and seals of us [*or* the hand and seal of me, *describing the court*].

This day of 18 .

J.S. (L.S.)
J.P. (L.S.)

(*a*) See section 96, *ante*, p. 101.
(*b*) See section 267, note (*e*), *ante*, p. 315.
(*c*) See section 96, note (*e*), *ante*, p. 102. Note that the examples of things required to be done are in very general terms, and do not justify the inference that the court may order the things to be done in any particular manner.

Note also with reference to this and other forms in this schedule for the use of courts of summary jurisdiction, that the forms under the Summary Jurisdiction Act, 1879, are equally applicable, and in some respects are more suitable, having regard to the changes in the procedure introduced by that Act.

FORM D.

Form of Order for Abatement of Nuisance by Local Authority (*a*).

To the town council, *&c.* [*as the case may be*].

County, *&c.* to wit. } WHEREAS [*recite complaint of nuisance as in last form*].

And whereas it hath been now proved to our [*or* my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known *or* can be found [*as the case may be*]; Now we [*or* I], in pursuance of the said Act, do order the said [*local authority, naming it*], forthwith to [*here specify the works to be done*].

Given, *&c.* (*as in last form*).

(*a*) See section 100, *ante*, p. 104.

FORM E.

Form of Order to permit Execution of Works by Owner (*a*).

County of [*or* borough, *&c.*] to wit. } WHEREAS complaint hath been made to me, *E.F.* Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*] of by *A.B.*, owner within the meaning of the Public Health Act, 1875, of certain premises [*describe situation of premises so as to identify them*], that *C.D.*, the occupier of the said premises, doth prevent the said *A.B.* from

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obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said *C.D.* doth prevent the said *A.B.* from [*here describe the works generally, according to circumstances, for instance, thus:* constructing and laying down, in connexion with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said *C.D.*, having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said *A.B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C.D.* do permit the said *A.B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of 18 .

J.S. (L.S.)

(*a*) See section 306, *ante*, p. 358.

FORM F. (*a*).

Order of Justice for Admission of Officer of Local Authority.

WHEREAS [*describe the local authority*] have by their officer [*naming him*] made application to me *A.B.* one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose, as the case may be*], and that such demand has been refused.

Now, therefore, I, the said *A.B.*, do hereby require you [*name the person having custody of the premises*], to admit the said [*name the local authority*], [*or* the officer of the said *local authority*], to the said premises, for the purpose aforesaid.

Given, *&c.* (*as in last form*).

(*a*) See section 102, *ante*, p. 105.

FORM G.

Form of Notice requiring Owner to Sewer, &c., Private Street (*a*).

To the owner of certain premises, fronting, adjoining or abutting on a certain street called within the district of [*describe the local authority*].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named [*local authority*] ; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered levelled paved flagged and channelled : Now, therefore, the said [*local authority*], hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer level pave flag and channel the same within the space of [*state the time*] from the date hereof, in manner following ; (that is to say), the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [*local authority*].

Each gully for surface draining, and its connexion with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above mentioned works to be executed by you in accordance with the plans and sections herein-before referred to and now lying for inspection by you at the office of the [*local authority*], situate in street in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said [*local authority*], or their surveyor.

Dated this day of 18 .

(Signed)

Clerk to the said [*local authority*].

(*a*) See section 150, *ante*, p. 152.

Form H.

Form of Mortgage of Rates (*a*).

By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from

Sched. 4. Forms. [*the rates mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said *A.B.*, his executors, administrators (*b*), and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of at [*place of payment*]. Dated this day of one thousand eight hundred and .

[*To be sealed with the common seal of the local authority.*]

(*a*) See section 236, *ante*, p. 274.
(*b*) Thus it appears that this mortgage is personal and not real property.

Form I.

Form of Transfer of Mortgage (*a*).

I, *A.B.*, of , in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, bearing date the day of and made by the local authority under the Public Health Act, 1875, for the district of for securing the sum of and interest thereon at per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and .

A.B. (L.S.)

(*a*) See section 238, *ante*, p. 275.

Form K.

Form of Rentcharge (*a*).

By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of do hereby declare and absolutely order that the inheritance of the [dwelling-house shop lands and premises, *as the case may be*], situated in street, in the parish of within the said district, and now in the occupa-

tion of shall be absolutely charged with the sum of pounds, paid by of for the improvement by drainage and water supply [*as the case may be*] of the same dwelling-house shop lands and premises [*as the case may be*], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said his executors administrators or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said his executors administrators and assigns, in manner following; (that is to say), the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the day of and the day of in every year, the first payment thereof to be made on the day of next, and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of in each of the next succeeding years towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

[*To be sealed with the common seal of the local authority*].

(*a*) See section 240, *ante*, p. 277

FORM L.

Register of Owners for the District of (a) .

Notice of Time for making Claims and Objections.

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of , and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous to have their names inserted in the register about to be made for the said district, and all persons who are desirous of objecting to any name on the register now in force, are hereby required to give or send to me, on some one of the first six days of March next, a claim or objection (*as the case may be*) in the form hereunder set forth.

(Signed)_____

Chairman of the local board.

Owner's Claim (b).

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To the chairman of the local board for the district of .

This day of , 18 .

I, the undersigned, claim to have my name inserted in the register of owners and proxies for the district of , pursuant to the provisions of the Public Health Act, 1875, as owner of the property hereinafter described, which is situated in the parish of , that is to say (*a*):—

I also state that the interest or estate which I have in such property, and the amount of all the rent-service which I receive or pay in respect thereof, and the names of the persons from whom I receive or to whom I pay such rent-service are set forth in the form hereunder written.

Description of property (*b*).	In respect of which I have an estate or interest of (*c*)	And in respect of which I receive in rent-service the sum of (*d*)	From (*e*)	And in respect of which I pay in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

Signature of claimant.

Address (*h*) of claimant.

(*a*) Here insert a clear statement of the property, as "house," "building," "house and acres of land."

(*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and also whether it is held by the claimant solely, or jointly with others, and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(*d*) If the property is let by the owner, insert the amount of rent received from each tenant.

(*e*) Insert name of tenant or tenants.

(*f*) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the owner's residence, but should be some address within the district.

* A partner must set out the amount of rent-service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself (c).

Claim of Proxy (d).

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To the chairman of the local board for the district of .

This day of , 18 .

I, the undersigned, having been appointed by , of , owner [*or* owners] of the property hereinafter described, which is situated in the parish of , to vote as his [*or* their] proxy pursuant to the provisions of the Public Health Act, 1875, claim to have my name inserted in the register of owners and proxies for the district of as such proxy.

I herewith transmit to you (*a*) the writing under the hand [*or* hands, *or in the case of a corporation* the seal] of appointing me such proxy.

I also state that the interest or estate which has [*or* have] in such property, and the amount of the rent-service which he [*or* they] receives or pays [*or* pay] in respect thereof, and the names of the persons from whom he [*or* they] receives [*or* receive], or to whom he [*or* they] pays [*or* pay] such rent-service are set forth in the form hereunder written.

Description of property (*b*).	In respect of which the appointor has an estate or interest of (*c*)	And in respect of which the appointor receives in rent-service the sum of (*d*)	From (*e*)	And in respect of which the appointor pays in rent-service the sum of (*f*)	To (*g*)
		£ *s.* *d.*		£ *s.* *d.*	

Signature of proxy.

Address (*h*) of proxy.

(*a*) If the appointment itself is not sent, insert the words "an attested copy of."

(*b*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*c*) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely, or jointly with others.

(*d*) If the property is let by the appointor, insert the amount of rent received from each tenant.

(*e*) Insert name of tenant or tenants.

(*f*) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.

(*g*) Insert the name of the lessor.

(*h*) This need not be the proxy's residence, but should be some address within the district.

Form of Objection (e).

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To the chairman of the local board of the district of .

This day of ,

I hereby give you notice that I object to the name of the person mentioned and described below being retained on the register of owners and proxies for the district of .

Christian and surname of the owner or proxy objected to.	Address, as described.	Nature of Qualification, as described.	Description (in case of proxy) of appointor.

Signature of objector.

Address of objector.

(a) See Schedule II., rule 25, *ante*, p. 398.
(b) See Schedule II., rule 21, *ante*, p. 397.
(c) There is no sign in the form corresponding to this note. Apparently the reference is to (*c*) and (*e*).
(d) See Schedule II., rule 21, *ante*, p. 397.
(e) See Schedule II., rule 22, *ante*, p. 397.

FORM M.

Appointment of Proxy (a).

To the chairman of the local board for the district of .

This day of , 18 .

I [*or* we], the undersigned, being the owner [*or* owners] of the property hereinafter described, which is situated in the parish of , do hereby appoint to vote as my [*or* our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [*or* we] hereby state that the description of the said property is as follows; viz. (*a*)

Signature of owner (*b*).

Address of owner.

Witness.

(*a*) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(*b*) Or of three directors; or in the case of a corporation *say*, Given under our common seal, and *add the name of the person or persons entitled to affix the seal.*

(a) See Schedule II., rule 15, *ante*. This instrument must be stamped. See the note to rule 15.

FORM N.

Form of Voting Paper at Elections of Members of Local Boards (*a*).

Voting Paper.

District of .

No. of Voting Paper.	Name and Address of Voter.	Number of Votes (*b*).	
		As Owner.	As Ratepayer.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Person Nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Name of the Nominator or one of the Nominators.	Address of such Nominator.

I vote for the persons in the above list against whose names my initials are placed.

(Signed)_____

or the mark of_____

Witness to the mark _____

*or*_____proxy for _____

Directions to the Voter.

Sched. 4. Forms.

The voter must write his initials against the name of every person for whom he votes, and must subscribe his name and address (*c*) at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote (*d*).

If a proxy votes he must in like manner write his initials, subscribe his own name and address (*c*), and add after his signature the name of the body of persons (*e*) for whom he is proxy.

This paper will be collected on the of between the hours of and (*f*).

(*a*) See Schedule II., rule 43, *ante*, p. 403.

(*b*) See *Reg.* v. *Lofthouse*, *ante*, p. 404.

(*c*) It is to be observed that the form does not contain an appointed space for the address. The provision as to filling it up in rule 45, *ante*, p. 404, does not require the voter to give his address. See the note to rule 45.

(*d*) See rule 47, *ante*, p. 405, and the notes thereto.

(*e*) It has been overlooked that the proxy may now act for a single individual. However, the voter will naturally insert his principal name in the space appointed.

(*f*) The 21 & 22 Vict. c. 98, set out the penal clause which provided against malpractices; but this is here omitted.

FORM O.

Form of Voting Paper for Poll taken under Schedule III. (*a*).

Voting Paper, No. ( ).

At a meeting held on the day of at in the county of it was agreed that the following resolution should be proposed to the owners and ratepayers of .

(*Set out the resolution.*)

——	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed)_____

or the mark of_____

Witness to the mark_____

or proxy for_____

Directions to the Voter.

Sched. 4. Forms.

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address (*b*) at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address (*b*), and add after his signature the words "as proxy for," with the name of the body of persons (*c*) for whom he is proxy.

This paper will be collected on the of between the hours of and .

(*a*) See Schedule III. rule (6), *ante*, p. 424.
(*b*) See note (*e*) to the last preceding form.
(*c*) See note (*e*) to the last preceding form.

SCHEDULE V.

Part I.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63 -	The Public Health Act, 1848	The whole Act.
14 & 15 Vict. c. 28 -	The Common Lodging Houses Act, 1851	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41 -	The Common Lodging Houses Act, 1853	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116 -	The Diseases Prevention Act, 1855	The whole Act, except so far as relates to the Metropolis.
18 & 19 Vict. c. 121 -	The Nuisances Removal Act for England, 1855	The whole Act, except so far as relates to the Metropolis.
21 & 22 Vict. c. 98 -	The Local Government Act, 1858	The whole Act.

Sched. 5. Part 1.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vict. c. 77 -	An Act to Amend the Acts for the Removal of Nuisances and the Prevention of Diseases	The whole Act, except so far as relates to the Metropolis.
24 & 25 Vict. c. 61 -	The Local Government Act (1858) Amendment Act, 1861	The whole Act.
26 & 27 Vict. c. 17 -	The Local Government Act Amendment Act, 1863	The whole Act.
26 & 27 Vict. c. 117 -	The Nuisances Removal Act for England (Amendment) Act, 1863	The whole Act, except so far as relates to the Metropolis.
28 & 29 Vict. c. 75 -	The Sewage Utilization Act, 1865	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41 -	The Nuisances Removal (No. 1) Act, 1866	The whole Act, except so far as relates to the Metropolis.
29 & 30 Vict. c. 90 -	The Sanitary Act, 1866	Parts I., II., and III., except so far as relates to the Metropolis or to Scotland or Ireland.
30 & 31 Vict. c. 113 -	The Sewage Utilization Act, 1867	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vict. c. 115 -	The Sanitary Act, 1868	The whole Act, except so far as relates to the Metropolis.
32 & 33 Vict. c. 100 -	The Sanitary Loans Act, 1869	The whole Act, except so far as relates to the Metropolis.
33 & 34 Vict. c. 53 -	The Sanitary Act, 1870	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79 -	The Public Health Act, 1872	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89 -	The Sanitary Law Amendment Act, 1874	The whole Act, except so far as relates to the Metropolis or the Metropolitan Police District.

Of the above Acts, the following (namely), "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts" (*a*).

(*a*) This definition ought more properly to have been inserted in section 4, *ante*, p. 15. It will be observed that the 37 & 38 Vict. c. 89, is not included in this definition, apparently through inadvertence.

PART II. (*a*).

Sched. 5. Part 2.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94 -	The Public Health Supplemental Act, 1849	The whole Act, except: Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90 -	The Public Health Supplemental Act, 1850 (No. 2)	The whole Act, except: Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42 -	The first Public Health Supplemental Act, 1852	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards), and section 13 (11 & 12 Vict. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act).

(*a*) This part has been repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

PART III. (*a*)

11 & 12 Vict. c. 63, s. 83.

As to interments within churches.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August, one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding *fifty pounds* (*b*), which may be recovered by *any person* (*c*), with full costs of suit, in an action of *debt* (*d*).

(*a*) In order to form a proper consolidation of the law it was deemed neces-

Sched. 5. Part 3.

sary entirely to repeal all the statutes applicable to the general subject of sanitary law. But in some of these statutes were found certain provisions which could not be introduced into the body of the Act, but which required to be kept in force. Accordingly those provisions are re-enacted in this part of the schedule.

(*b*) See, as to the recovery of this penalty, section 251, *ante*, p. 289.

(*c*) That is, by any person, without the consent of the Attorney-General under section 253. See the notes to that section, *ante*, p. 292, and *Fletcher* v. *Hudson* there cited.

(*d*) The form of action here referred to is now abolished, but the right of action is not affected by recent legislation relating to procedure.

21 & 22 Vict. c. 98, s. 49 (*a*).

Local board to be burial board in certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a *general district rate* (*b*).

Provided, that if such parish has been declared a ward for the election of members of the local board (*c*), such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

(*a*) See also 29 & 30 Vict. c. 90, s. 44, *post*, and the Burial Acts printed in the Appendix.

(*b*) Under the Burial Acts the poor rate was chargeable.

(*c*) See Schedule II., rule 6, *ante*, p. 392.

24 & 25 Vict. c. 61, s. 21.

Urban authorities may repair fences surrounding burial grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass *bye-laws* (subject to the provisions of this Act (*a*)) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of *any rates* (*b*) authorized to be levied by any urban authority constituted a burial board.

(*a*) See section 182, *ante*, p. 215.

(*b*) That is, out of the general district rate or out of the poor rates.

26 & 27 Vict. c. 17, s. 6.

Local government dis-

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts,

such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.

Districts to be within highway districts for purpose of highway meetings.

29 & 30 Vict. c. 90, s. 44.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer, the urban authority shall have all such estate, property, rights, powers, duties, and liabilities, as if they had been duly appointed a burial board under the *Burial Acts* for the time being in force.

Power to burial boards in certain cases to transfer their powers to urban authority.

34 & 35 Vict. c. 33, s. 2, enacted that "this Act shall be construed as one with the Acts mentioned in the schedule to this Act, and those Acts and this Act may be cited together as *the* Burial Acts, 1852 to 1871, and each of them may be cited as the Burial Act of the year in which it was passed. The schedule sets forth the following Acts and their titles: 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100. It is manifestly impossible to include all these Acts in the present volume, but some of the provisions more directly affecting sanitary authorities will be found in the Appendix. As to the powers of local boards to act as burial boards under local Acts, see the Burial Act, 1855, 18 & 19 Vict. c. 128, ss. 19, 20. On the subject of the Burial Acts reference should be made to *Glen's Burial Acts.*

29 & 30 Vict. c. 90, s. 51.

All penalties imposed by the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several laws relating to quarantine and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

Power to reduce penalties imposed by 6 Geo. 4, c. 78.

29 & 30 Vict. c. 90, s. 52.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom.

Description of vessels within provisions of 6 Geo. 4, c. 78.

6 Geo. 4, c. 78, is set out in the Appendix, *post.*

35 & 36 Vict. c. 76, s. 34.

Sched. 5. Part 3. As to consent of Local Government Board required in certain cases.

Where in any *local Acts* the consent, sanction, or confirmation of one of Her Majesty's principal Secretaries of State is required with respect to the *borrowing* of any money, to the giving effect to any *bye-laws*, or to the *appointment* of any officer for *sanitary purposes*, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the *borrowing of money* for the purposes of the Baths and Wash-houses Acts (*a*).

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

(*a*) See the definition of these Acts in section 4, *ante*, p. 14. The Acts themselves will be found in the Appendix.

35 & 36 Vict. c. 79, s. 35.

Transfer of powers and duties of Board of Trade under Alkali Act, 1863, and Metropolis Water Acts, 1852 and 1871, to Local Government Board.

The powers and duties of the Board of Trade under the *Alkali Act*, 1863, *and any Act amending the same* (*a*), and under the *Metropolis Water Acts*, 1852 and 1871 (*b*), shall be exerciseable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

(*a*) The Alkali Act, 1863, and the Acts amending the same (26 & 27 Vict. c. 124; 31 & 32 Vict. c. 36; 37 & 38 Vict. c. 43) have been repealed by the Alkali, &c., Works Regulation Act, 1881, 44 & 45 Vict. c. 37. This statute imposes upon sanitary authorities important duties with respect to alkali works. It is printed in the Appendix.

(*b*) See 15 & 16 Vict. c. 84; 34 & 35 Vict. c. 113.

35 & 36 Vict. c. 79, s. 36.

Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's principal Secretaries of State by the several Acts of Parliament relating to *highways* in England and Wales, and to *turnpike roads and trusts and bridges* in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

35 & 36 Vict. c. 79, s. 37.

Sched. 5. Part 3. Transfer of officers to Local Government Board.

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872 (*a*), attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

(*a*) 34 & 35 Vict. c. 70, transferred certain powers to the Local Government Board, and at the same time placed the officers of departments previously engaged thereon under the control of the new board. 35 & 36 Vict. c. 79, transferred other powers, and in section 37 makes a similar provision as to the officers engaged therein. 34 & 35 Vict. c. 70, remains unrepealed (see the Act in the Appendix), but as 35 & 36 Vict. c. 79, is wholly repealed, the 37th section is here re-enacted.

35 & 36 Vict. c. 79, s. 38.

Salary of medical officer.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasury may from time to time determine.

See, as to the appointment of this officer, 21 & 22 Vict. c. 97, s. 4; but note that that section is repealed by the Statute Law Revision Act, 1875, so far as relates to his salary.

35 & 36 Vict. c. 79, s. 48.

Orders of the Local Government Board how to be published.

Every general order of the Local Government Board, made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, shall be published in the *London Gazette*, and when so published shall take effect in like manner, and shall be of as much force and validity as any general order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single order of the said Board made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

See, upon this section, which refers to orders relating to the relief of the poor, 4 & 5 Will. 4, c. 76, ss. 16, 17, 18; 10 & 11 Vict. c. 109, ss. 14, 17; 31 & 32 Vict. c. 122, ss. 1, 2.

And as to the publication of the orders and their admissibility as evidence, see section 135, *ante*, p. 132, and the notes to that section.

THE PUBLIC HEALTH (WATER) ACT, 1878.

(40 & 41 Vict. Cap. 25.)

An Act to amend the Public Health Act, 1875, *so far as relates to the supply of Water.* [4th July, 1878.]

Sect. 1. 38 & 39 Vict. c. 55.

Whereas it is expedient to amend the provisions of the Public Health Act, 1875:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction.

1. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875.

Commencement of Act.

2. This Act shall come into operation on the twenty-fifth day of March one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.

3. It shall be the duty of every *rural sanitary authority* (*a*), regard being had to the provisions in this Act contained, to see that every *occupied* dwelling-house within their district has within a reasonable distance an available supply of *wholesome* water sufficient for the consumption and use for domestic purposes (*b*) of the inmates of the house.

Where it appears to a *rural* sanitary authority, on the report of their inspector of nuisances, or their medical officer of health, that any *occupied* dwelling-house within their district has not *such* supply within a reasonable distance, and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per

week, as the Local Government Board may on the application of the local authority determine under all the circumstances of the case to be reasonable (*c*), and that the expense of providing the supply ought to be paid by the owner or defrayed as private improvement expenses (*d*), proceedings may be taken as follows: Sect. 3.

(1.) The authority may serve on the *owner* (*e*) of the house a *notice* requiring him, within a time specified in the notice and not exceeding *six months* from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose (*f*).

(2.) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the *owner* a *second notice* (*e*) informing him that if the requirements of the first notice are not complied with within *one month* from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of providing the supply will in that case be payable by the owner or as a private improvement expense (*d*).

(3.) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house, and for the purposes of such entry sections 102 and 103 of the Public Health Act, 1875 (*g*), shall apply until the works are completed, in the same manner as if an order of a court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with. 38 & 39 Vict. c. 55.

(4.) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered *in a summary manner* from the *owner* of the house (*h*), or may, at the option of the authority, be declared, by their order, to be *private improvement expenses* (*d*).

(5.) Where the owners of *two or more* houses have failed to comply with the requirements of the notices served on

Sect. 3.

them under this section, and the authority might, under this Act, execute the necessary works for providing a water supply for each house, the authority may, if it appears to them desirable, and no greater expense would be occasioned thereby, execute works for the *joint supply* of water to those houses, and apportion the expenses as they deem just.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should not be complied with (*i*), withdraw the notice or modify the requirements thereof.

Provided that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost (*k*).

38 & 39 Vict. c. 55.

(*a*) Note that this applies only to a rural authority, not to an urban authority. But an urban authority may obtain the power of a rural authority under section 11, *post*.

It has been held that the provisions of this Act do not repeal section 62 of the Public Health Act, 1875, *ante*, p. 71. *Colne Valley Waterworks Company* v. *Treharne*, 48 J. P. 279. A notice may still be given, therefore, under that section.

(*b*) As to what are *domestic* purposes, see the Waterworks Clauses Act, 1847, section 53, in the Appendix.

(*c*) The meaning of this appears to be that when a house has not a sufficient supply of wholesome water, the rural authority may proceed under the following part of the section, provided the cost of providing a sufficient supply, *i.e.*, of executing the works necessary for the supply, does not exceed £8 13*s*. 4*d*. If the cost would exceed that sum, the rural authority must apply to the Local Government Board to determine what is a reasonable sum not exceeding £13 in any case. Compare with this the Public Health Act, 1875, section 62, *ante*, p. 71.

(*d*) See the Act of 1875, section 213, *ante*, p. 248.

(*e*) See the definition of *owner*, *ante*, p. 6. And as to the service of the notice, see the Act of 1875, sections 266, 267. Forms of these notices are set out in the schedule to this Act.

(*f*) These words do not authorize the rural authority in specifying the particular works they may think necessary. See the note to similar words as used in the Act of 1875, section 96, *ante*, p. 102.

(*g*) *Ante*, pp. 105–6. No order is necessary to justify this entry.

(*h*) As to the recovery of these expenses, see the Public Health Act, 1875, section 251, *ante*, p. 289.

(*i*) Cause may be shown in the memorial mentioned in the next section, or the owner may be heard personally by the local authority.

(*k*) See as to the consequences of default in the performance of this duty, the Public Health Act, 1875, section 299, *ante*, p. 350.

Sect. 4.

Appeal by owner against requirement to provide water supply.

4. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and *objects* to such requirement on any of the following grounds; that is to say,

(1.) That the supply is not required; or

(2.) That the time limited by the notice for providing the supply is insufficient; or

(3.) That it is impracticable to provide the supply at a reasonable cost (*a*); or,

(4.) That the authority ought themselves to provide a supply of water for the district or *contributory place* (*b*) in which the house is situate, or to render the existing supply of water wholesome; or

(5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be a charge on the district or contributory place;

he may, within *twenty-one* days after service on him of the *second* notice, address a *memorial* (*c*) to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they might otherwise execute under this Act until they have been authorized to execute the same by a *court of summary jurisdiction* (*d*) or by the Local Government Board in manner herein-after provided.

If the objections stated in the memorial do not include either the *fourth* or *fifth* of the above-mentioned grounds, the authority may apply to a *court of summary jurisdiction* (*d*) for an order authorizing them to proceed with the works, and thereupon the court shall summon the owner, and, if satisfied on hearing the case that the objections are not well founded, shall make an order authorizing the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order (*e*).

If the objections stated in the memorial are or include the *fourth* and *fifth* of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the *Local Government Board*, who may either cancel the requirement of the authority, or confirm the same, with or without modifications (*f*).

If the Local Government Board confirm the requirement they shall issue *an order* (*g*) authorizing the authority, subject to such modifications, if any, as they prescribe, to execute the works in the event of such works not being executed by the owner within a time limited by the order.

Sect. 4. Any such *order* (*f*) may, if the Local Government Board think it equitable so to do, *apportion* the expense of providing the supply between the owner of the house and the authority of the district comprising the *contributory place* (*b*) in which the house is situate, or between the owner and any other person or persons.

If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a *complaint of default* made to the Local Government Board against the authority under the 299th section of the Public Health Act, 1875 (*h*).

(*a*) This means apparently that the supply cannot be provided without the expenditure of a sum greater than the maximum fixed by the last section.

(*b*) As to what is a contributory place, see section 229, *ante*, p. 263.

(*c*) No form is prescribed for this memorial. It should, however, be carefully drawn up, and it should in fact follow the words of this section as nearly as possible. It is not necessary to state evidence in support of the objections.

(*d*) See the definition, *ante*, p. 15.

(*e*) Note that the order does not require the owner to execute the works unless he chooses, and that it merely authorizes the rural authority to do so.

(*f*) No provision is made for the hearing of the case by the Local Government Board. They may direct an enquiry under the Public Health Act, 1875, s. 293, *ante*, p. 345. But if they do not direct an enquiry, it would seem that the memorial addressed to them should contain a full statement of the facts relied upon in support of the objections. The functions of the Local Government Board under this section appear to be judicial, and if so, the observations of the Court of Appeal in *Reg.* v. *Local Government Board*, *ante*, p. 316, as to allowing the memoralist to reply to the answer of the local authority, would seem to apply.

(*g*) This order will be conclusive as to the power of the local authority to execute the works, and as to the apportionment of the expenses. See the Public Health Act, 1875, section 295, *ante*, p. 345. Note that this order, however, like that of the court of summary jurisdiction above-mentioned merely *authorizes* the rural authority to execute the works.

(*h*) See this section, *ante*, p. 350.

Appeal against apportionment of expenses.

5. Where the expenses of providing a *joint supply* of water for two or more houses are apportioned under this Act (*a*) by a rural sanitary authority among the owners of the several houses, *notice of such apportionment* (*b*) shall be forthwith given to each of such owners, and if any owner objects to the apportionment as unjust, he may, within *twenty-one* days after service on him of notice thereof, apply to a justice, and thereupon the justice may summon the authority, and also the other owners, to show cause before a *court of summary jurisdiction* (*c*) why the apportionment should not be varied, and the court may either dismiss the application or make

such order varying the apportionment as to the court may appear reasonable (*d*). Sect. 5.

(*a*) That is under section 3, sub-section (5), *supra*.
(*b*) As to the service of such notices, see the Public Health Act, 1875, sections 266, 267, *ante*, pp. 314–15.
(*c*) See the definition, *ante*, p. 15. Any one justice may issue the summons, but the hearing must be before a court of two or more justices or a stipendiary magistrate.
(*d*) This order may be appealed from under the Public Health Act, 1875, section 269, *ante*, p. 317.

Houses in rural districts not to be erected or rebuilt without sufficient water supply.

6. It shall not be lawful in any *rural* district for the owner of any *dwelling-house* which may be erected after the date of the commencement of this Act, or of any dwelling-house which after that date may be pulled down to or below the ground floor and rebuilt, to occupy the same, or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a *certificate* that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house (*a*).

If the sanitary authority refuse to grant such certificate, the owner may apply to a *court of summary jurisdiction* for an order authorizing the occupation of the house notwithstanding the refusal of the certificate, and thereupon the court shall summon the authority, and if the court, after hearing the case, is of opinion that the certificate ought to have been granted, the court may make an order authorizing the occupation of the house (*b*).

Any *owner* (*c*) who occupies a house or causes or permits it to be occupied in contravention of this section shall be liable on conviction by a court of summary jurisdiction to a penalty not exceeding *ten pounds* (*d*).

(*a*) This section should be compared with the Public Health Act, 1875, s. 62, *ante*, p. 71, which applies to all houses, whether old or new. The effect of this provision is to prevent the occupation of any new house in a rural district until it has been properly supplied with water.
(*b*) For the definition of a court of summary jurisdiction see section 4, *ante*, p. 15. This clause gives the owner an appeal to the court. There is a further appeal to the quarter sessions under section 269, *ante*, p. 317, against the determination of the court whether the order is made or refused.
(*c*) See the definition, *ante*, p. 6.
(*d*) For the recovery of this penalty see the Public Health Act, 1875, s. 251, *ante*, p. 289; see also section 253, *ante*, p. 292.

Sect. 7.

Periodical inspections of water supply.

7. It shall be the duty of every *rural sanitary authority* from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorized in writing for that purpose by the authority, if they or he have or has reasonable ground for believing that any *occupied* dwelling-house within the district is without a proper supply of wholesome water, sufficient for the consumption and use for *domestic purposes* (*a*) of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance; and for the purposes of any such admission sections 102 and 103 of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorized as aforesaid were an officer of the rural sanitary authority (*b*).

38 & 39 Vict. c. 55.

(*a*) See the note to these words as used in the Waterworks Clauses Act, 10 & 11 Vict. c. 17, s. 53, in the Appendix, *post*.

(*b*) See these sections, *ante*, pp. 105, 106. Note that the officer or other person cannot effect an entry by force. If admission is denied him he must obtain a justice's order.

Explanation of section 62 of 38 & 39 Vict. c. 55, as to the meaning of "reasonable cost."

8. Where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875 (*a*), to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorized by such general scale of charges (*b*).

(*a*) See this section, *ante*, p. 71.

(*b*) The Local Government Board have made orders under the section referred to in many cases.

Rating for water supply by stand-pipes.

9. Where a rural sanitary authority have provided a *stand-pipe* or stand-pipes for the supply of water to any portion of their district, they may recover *water rates* or *water rents* (*a*) from the owner

Sect. 9.

or occupier of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises.

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the house (*b*).

(*a*) Water *rates* are made under section 56 of the Public Health Act, 1875, *ante*, p. 56. Water *rents* are payments made to the authority under agreements between the authority and the consumer. See section 56, note (*a*), *ante*, p. 66.

(*b*) *Primâ facie* water rates will be payable in respect of every house within 200 feet of a stand-pipe. But payment cannot be enforced if the person charged can show that he is within the proviso.

Power to require water rates to be levied. 38 & 39 Vict. c. 55.

10. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any *urban district* (*a*) or in *any contributory place* (*b*), and an application is made to them by any *ten* persons rated to the relief of the poor in such urban district, or by any *five* persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875, and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place (*c*).

(*a*) As to what is an urban district, see the Public Health Act, 1875, s. 6, *ante*, p. 17.

(*b*) As to what is a contributory place, see the Public Health Act, 1875, s. 229, p. 264.

(*c*) The effect of this is to transfer all or part of the expense of the water supply from the entire urban district or contributory place to the consumers. The default of the local authority in complying with this section is not provided for. It is doubtful whether such default is within the terms of section 299 of the Public Health Act, 1875, *ante*, p. 350; but if that section does not apply the proper remedy is apparently by *mandamus*.

Powers of urban sanitary authorities in certain cases.

11. The Local Government Board may, if they think fit, by *order* (*a*), invest any *urban* sanitary authority with all or any of the powers and duties which are by this Act given to a *rural* sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the

Sect. 11. time, *portion of the district*, or manner during at or in which the powers and duties are to be exercised (*b*).

(*a*) This order will be conclusive. See section 295, *ante*, p. 345.
(*b*) The Local Government Board have thus unlimited discretion as to the extent to which the Act is to be applied to any urban district.

Forms in the schedule.

12. The forms contained in the schedule to this Act, or forms to like effect varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

Powers of Act cumulative.

13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom.

THE SCHEDULE.

Form (A).

Form of Notice requiring Owner to provide a supply of Water for an Occupied House.

Schedule Forms.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost; and whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of 187 .

(Signed)

Clerk to the said [*local authority*].

FORM (B).

Form of Second Notice to be served where Requirements of First Notice have not been complied with.

Schedule Forms.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas on the day of the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice bearing date the day of requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice:

And whereas the said notice has not been complied with: Now, therefore, we, the said [*local authority*], do hereby give you notice that if the requirements of the said first notice dated the day of are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily or be recovered as private improvement expenses.

Dated this day of 187 .

(Signed)

Clerk to the said [*local authority*].

THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 Vict. Cap. 31.)

An Act to amend the Public Health Act, 1875, *as to Interments.*

[21st July, 1879.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Sect. 1. Short title and construction. 38 & 39 Vict. c. 55.

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

The provisions of 38 & 39 Vict. c. 55, extended to cemeteries.

2. (1.) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery.

(2.) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district.

38 & 39 Vict. c. 55, ss. 32-34.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The provisions of the principal Act here referred to are sections 141—3, *ante*, pp. 134—6. The text therefore enables the local authority to provide and fit up a cemetery, and they must do so if the Local Government Board so require. They may also make bye-laws with respect to its management and charges for the use of the same.

On the 19th August, 1879, the Local Government Board issued a circular in which the duties and powers of local authorities are clearly set forth, and it is therefore here set out nearly at length:—

The object of the Act is to enable sanitary authorities, rural as well as

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urban, to provide cemeteries for their districts, and for this purpose all the provisions of the Public Health Act, 1875, with respect to a mortuary are extended to a cemetery.

As the sanitary authority are aware, section 141 of the Public Health Act enables a sanitary authority to provide and fit up a proper place as a mortuary for the reception of dead bodies before interment, and to make bye-laws with respect to the management and charges for the use of the same, and it is moreover compulsory on a sanitary authority to provide a mortuary if they should be required by the Local Government Board to do so.

The effect, therefore, of the Act, which has just been passed, is, in like manner, to empower a sanitary authority to provide a cemetery, and to render it compulsory on them to do so if the Local Government Board should require one to be provided.

The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them.

The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action:

1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided;
2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place or within certain limits.

There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow.

The question, however, whether a cemetery should be provided for a particular locality will be one for the determination of the sanitary authority in the first instance; and it is only in the event of their default to establish a proper cemetery where one is required, or in consequence of a loan being needed to carry out the undertaking, or, if they should determine to construct a cemetery outside their district, of objection being taken to such a proceeding, that the Local Government Board have any authority to interfere.

The President has reason to believe that in numerous localities considerations of public health require that a cemetery should be provided, and with a view of enabling the authority to determine whether on sanitary grounds it is necessary, or desirable, that a cemetery should be provided for all or any part of their district the medical officers of health should be instructed to report upon the state of the several burial grounds within the area subject to their jurisdiction.

The statute enables a sanitary authority to acquire, construct, and maintain a cemetery either within or without their district. In the latter case, however,

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at least three months before the cemetery is commenced public notice must be given, and, in the event of any objection, the work cannot proceed without the sanction of the Local Government Board after local inquiry.

It will be seen, therefore, that a sanitary authority are empowered not only to establish a cemetery, but also to purchase an existing one; and it will be competent for the sanitary authority, in the event of their failure to acquire a suitable site by agreement, to apply for a provisional order enabling them to take lands for the purpose compulsorily.

Moreover, with the sanction of the central authority, they will be enabled to borrow money to pay for the purchase of the requisite land, for draining and inclosing the site, and for rendering it otherwise suitable for the object intended.

At the same time I am to point out that, if the sanitary authority should deem it expedient to provide a cemetery without resorting to a loan for the purpose, it is competent for them to do so, and to charge the cost upon the local rates.

In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place.

In addition to the powers conferred upon sanitary authorities of purchasing land for a cemetery the recent Act authorizes them to accept a donation of land for the purpose, and also a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of section 141 of the Public Health Act, 1875, will enable the sanitary authority to make bye-laws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein.

It should be borne in mind, however, that such bye-laws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the department should hereafter frame a series of model bye-laws to be recommended for adoption.

In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated,

Note to Sect. 2.

either wholly or partly, with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some general and several local improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

The President therefore thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exercisable by them under the incorporated enactments.

With respect to the Making of the Cemetery.

The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier.

The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery.

The cemetery must be inclosed by substantial walls, or iron railings, of the height of eight feet at least.

The sanitary authority must keep the cemetery and the buildings and fences thereof in complete repair and in good order and condition.

With respect to Burials.

The sanitary authority may set apart a portion of the cemetery for burials according to the rites of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart.

A chapel, to be approved by the bishop, must be built on the consecrated part for the performance of the burial service of the Established Church.

A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church, and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church.

With respect to exclusive rights of Burial and Monumental Inscriptions.

The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the legislature.

Note to Sect. 2.

Model bye-laws for cemeteries have also been issued. In the memorandum which accompanied these bye-laws the Secretary of the Board (Sir John Lambert) says:—

The combined effect of the enactments in section 141 of the Public Health Act, 1875, and in section 2 (1) of the Public Health (Interments) Act, 1879, is to enable a local authority to make bye-laws with respect to the management and charges for use of a cemetery provided under the latter Act. It is, however, to be observed that this power of making bye-laws is only one of several means which the local authority may employ for the proper control of their cemetery. For example, section 37 of the Cemeteries Clauses Act, 1847, which is incorporated with the Act of 1879, enables the local authority to appoint gravediggers and other servants necessary for the care and use of the cemetery. Where a gravedigger is appointed by the local authority, they may conveniently dispense with many regulations which might otherwise require to be embodied in bye-laws. It may be assumed that, as a servant of the local authority, the gravedigger will act in strict accordance with their directions as to such matters as the appointment of grave spaces, the dimensions of graves, and their separation by a sufficient thickness of undisturbed earth. These subjects may accordingly be regarded as outside the range of such bye-laws as will ordinarily be needed. At the same time it is important, for the reasons which are explained in the accompanying memorandum, that the local authority should give definite instructions to their servants as to the manner in which their duties are to be discharged.

The Board desire me to add that local authorities who may intend to adopt the model clauses as the basis of their bye-laws will, on application to the Board, be furnished with copies of those clauses, on foolscap paper, with a margin for annotations. These draft forms should be used in accordance with the instructions in the Circular of the 25th of July, 1877.

10 & 11 Vict. c. 65, incorporated with this Act.

3. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act.

This Act is set out in the Appendix, *post*.

THE PUBLIC HEALTH (FRUIT PICKERS LODGINGS) ACT, 1882.

(45 & 46 Vict. Cap. 23.)

An Act to extend the Public Health Act, 1875, *to the making of Bye-laws for Fruit Pickers.* [12th July, 1882.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1.

Short title and construction of Act.

1. This Act may be cited as the Public Health (Fruit Pickers Lodgings) Act, 1882, and shall be construed as one with the Public Health Act, 1875.

38 & 39 Vict. c. 55.

Power to make bye-laws for fruit pickers.

2. Section three hundred and fourteen of the Public Health Act, 1875 (*a*), which enables any local authority to make *bye-laws* for securing the decent lodging and accommodation of persons engaged in *hop picking* within the district of such authority, shall be deemed to extend to and authorize the making of bye-laws for securing the decent lodging and accommodation of persons engaged in the *picking of fruit and vegetables.*

(*a*) *Ante*, p. 367.

THE PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS), AMENDMENT ACT, 1883.

(46 & 47 Vict. Cap. 37.)

An Act to amend the Public Health Act, 1875, *and to make provision with respect to the Support of Public Sewers and Sewage Works in Mining Districts.* [25th August, 1883.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1.

Short title and construction.

1. This Act may be cited as the Public Health Act, 1875, (Support of Sewers) Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the Principal Act), as amended by the Acts for the time being in force amending the same.

This Act has been referred to in the notes to some of the sections of the Public Health Act, 1875. It was passed soon after, and indeed apparently in consequence of the decision of the Court of Appeal in *Re The Corporation of Dudley*, 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. (N.S.) 733; 46 J. P. 340. In that case it was held that the Public Health Act, 1875, imposed upon landowners through whose land a sewer was laid, an obligation to preserve to such sewer *subjacent* support, and gave them a right to immediate compensation for being deprived of the free power of working subjacent mines. The court seemed to doubt whether any obligation was imposed as to *lateral* support, though from the remarks of JESSEL, M. R., in *Roderick* v. *Acton Local Board*, 5 Ch. D. 328; 46 L. J. Ch. 802; 36 L. T. (N.S.) 328; 25 W. R. 403; 41 J. P. 516, it might be inferred that in the opinion of that learned judge there was a right of lateral support for which the landowner was entitled to compensation. The present Act deals with the subject of support, but though the title would imply that it has reference only to sewers, the definition in the next section shows that it has a much wider application. Its effect is briefly as follows. The local authority are not to be entitled to minerals under any sanitary works constructed by them unless such minerals have been expressly purchased. Such minerals must not be worked if under or near the sanitary works without giving notice to the local authority, who may then take the minerals, making compensation for them. The local authority may, however, define the extent to which they desire support to be left. The amount of compensation is to be settled by arbitration. If the local authority refuse to take the minerals, the owner is to be at liberty to work them, though he must not do so in any unusual manner so as to cause damage. Power is preserved to the owner, if he is prevented from working the mines under the sanitary works, of making mining communications so as to work the mines on either side. Except as aforesaid, a local authority are not hereafter to acquire any right of support whether vertical or lateral; but the saving clause preserves all rights actually acquired before the passing of the Act. This Act will materially affect the amount of compensation to be paid by a local authority in a mining district, for as by the mere execution of a sanitary work they acquire in right of support, they will not have to pay for it until the owner of the mines is desirous of working them. It is to be noticed, however, that the Act is limited in its application to support from mining lands. The law as to support in other cases remains as it was before the Act passed, that is to say, as declared in the *Corporation of Dudley's case, supra*.

Interpretation.

2. In this Act,—

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a *local authority* under the powers or for the purposes of so much of the Principal Act or of any General or Local Act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

Sect. 2.

The expression "support" includes vertical and lateral support (*a*):

The expression "Sanitary Act" means the Act or Provisional Order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this Act:

The expression "person" includes a body corporate.

(*a*) It will be observed that the Act applies to the support of many sanitary works besides sewers, though the title would imply that it was confined to sewers. Thus it will apply to gas and waterworks, or pipes, and to sewage works other than sewage.

Application of provisions of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, with respect to mines, to sanitary works over mines.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive) (*a*), with respect to mines, shall, in relation to any *sanitary work* (*b*) of a local authority, be deemed to be incorporated with this Act and with the *Sanitary Act* (*b*) under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say):—

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority, and as if the expression "the Special Act" referred to such *Sanitary Act* (*b*) and this Act, and as if expressions relating to pipes, conduits, or other works referred to the *sanitary work* (*b*):

(2.) The local authority, by or with any *notice* under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines (*c*), may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit (*d*):

(3.) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act (*e*):

(4.) The amount of any compensation in respect of support for a

Sect. 3.

sanitary work (*b*) payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the *Sanitary Act* (*b*), together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act (*f*):

(5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted *before* the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not *vested in* or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place (*g*).

(*a*) These sections are set out in the Appendix, *post*.

(*b*) See the definition in the last section.

(*c*) The notice here referred to is the notice to the owner not to work the minerals, under 10 & 11 Vict. c. 17, s. 22.

(*d*) Forty yards is the extent prescribed by the Waterworks Clauses Act. Under this Act the local authority may require support to any extent whether less or more than forty yards. This will to some extent, if not altogether, obviate the difficulty arising out of the decision in *The Metropolitan Board of Works* v. *The Metropolitan Railway Company*, *ante*, p. 31.

(*e*) That is, on or before the 25th August, 1884. See the section referred to.

(*f*) That is to say, such compensation shall be paid pursuant to the provisions of the principal Act, unless the work is done pursuant to a special Act or provisional order which makes special provision for these purposes.

(*g*) This clause was probably inserted to protect the rights of the owners of mines under roads vested in urban authorities under the Public Health Act, 1875, section 149, *ante*, p. 146. It has been decided that that section does not vest the minerals in the urban authority (see the cases cited in the notes to that section); and the Highway Act, 1878, 41 & 42 Vict. c. 77, s. 27, contains an express provision with reference to the right to work mines under disturnpiked roads which have become vested in an urban authority. The case of *Normanton Gas Company* v. *Pope*, 49 L. T. (N.S.) 798, may be referred to in illustration of this clause. The question in that case related to the right of subjacent support to gas pipes laid in a highway.

Sect. 4.

Limitation of right to support for sanitary works over mines.

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the *Sanitary Act* (*a*) under the authority of which a *sanitary work* (*a*) has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such *Sanitary Act* shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a *sanitary work* caused in or consequent upon the working of any mines in a reasonable and proper manner (*b*).

(*a*) See the definition in section 2, *ante*.

(*b*) This section gives the Act a retrospective operation, except as to cases in which a right of support has already been acquired, as to which see the next section. Its effect is to prevent for the future the acquisition of any right of support otherwise than as provided by the Act. Therefore no such right can hereafter be acquired by prescription.

Savings.

5. Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this Act.

Where any right of support *has been acquired* (*a*) before the passing of this Act by a local authority in respect of any *sanitary work*, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

(*a*) Note these words. This section was inserted to preserve to the local authority such rights of support as they had actually acquired by prescription at the date of the Act.

But such a right must have been actually acquired; in other words, if it is claimed to have been acquired by prescription, the prescriptive period must have been complete before the passing of the Act. If it was not complete the landowner will be entitled to the benefit of the Act.

THE EPIDEMIC AND OTHER DISEASES PREVENTION ACT, 1883.

(46 & 47 Vict. Cap. 59.)

An Act to make better provision for the Prevention of outbreaks of formidable epidemic, endemic, or infectious diseases, and to amend the Public Health Act, England, 1875, *and the Public Health Act, Ireland*, 1878. [25th August, 1883.]

Preamble. Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. **1.** This Act may be cited as the Epidemic and other Diseases Prevention Act, 1883.

Extension of borrowing powers for preventing disease. 38 & 39 Vict. c. 55. 41 & 42 Vict. c. 52.

2. Whenever any part of England or of Ireland appears to be threatened with or affected by any *formidable* epidemic, endemic, or infectious disease (*a*), and the Local Government Board, England, under the provisions of the Public Health Act, England, 1875 (*b*); or the Local Government Board, Ireland, under the provisions of the Public Health Act, Ireland, 1878, make regulations for all or any of the following purposes, namely:

(1.) For the speedy interment of the dead.

(2.) For house to house visitation.

(3.) For the provision of medical aid and hospital accommodation; and

(4.) For the promotion of cleansing, ventilation and disinfection, and for guarding against the spread of disease.

The purposes named in the said regulations, shall be deemed to be purposes for which sanitary authorities may borrow money, and the local authorities in England, and the sanitary authorities in Ireland, charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England and the Board of Public Works in Ireland may lend money to such authorities, as if such purposes were "works" for which loans may be granted under the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878 (*c*).

Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the Local Government Board desirable in order to the prompt and effective execution of such regulations (*d*). Sect. 2.

(*a*) See the notes to the Public Health Act, 1875, s. 134, *ante*, p. 131.
(*b*) That is under section 134, *ante*, p. 131.
(*c*) See the provisions of the Public Health Act, 1875, ss. 233—244, *ante*, pp. 270—280, as to borrowing. See also the Public Works Loans Act, 1875, and the Acts amending it, in the Appendix.
(*d*) See note (*a*) to section 233, *ante*, p. 270, and section 234, sub-section (3), as to the public notice and inquiry here referred to.

Amendment of clause 150 of Public Health Act, Ireland, 1878.

3. Whereas by the one hundred and fiftieth section of the Public Health, Ireland, Act, 1878, the board of guardians of any union in which regulations for prevention of the spread of formidable epidemic, endemic, or infectious diseases made by the Local Government Board are declared to be in force, are the authority appointed to superintend and see to the execution of such regulations, to the exclusion of all other sanitary authorities.

And whereas in the event of the outbreak of any formidable epidemic, such exclusion of the urban sanitary authority in cities and large towns might lead to delay and inconvenience.

Be it enacted that whenever the Local Government Board, Ireland, shall make any such regulations, the Board may direct the urban sanitary authority within any district in which such regulations shall be declared to be in force, to superintend and see to the execution of such regulations, or any of them, either independently or jointly with the board of guardians of any union within which or within part of which regulations so issued by the Local Government Board are declared to be in force, and thereupon every urban sanitary authority so directed by the Local Government Board shall have the like powers and authority in every respect as the board of guardians of any union within such district.

THE PUBLIC HEALTH (CONFIRMATION OF BYE-LAWS) ACT, 1884.

(47 Vict. Cap. 12 (*a*)).

An Act to amend the Public Health Act, 1875, *so far as relates to the Confirmation of Bye-laws.*

[19th May, 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction.

1. This Act may be cited as the Public Health (Confirmation of Bye-laws) Act, 1884, and shall be construed as one with the Public Health Act, 1875.

Definitions.

2. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; (that is to say,)

"Incorporated enactments" means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847 (1), sections sixty-eight and sixty-nine of the Towns Police Clauses Act, 1847 (2), and section forty-two of the Markets and Fairs Clauses Act, 1847 (3), which Acts are hereinafter referred to as the incorporated Acts (*a*):

(1) 10 & 11 Vict. c. 34, s. 128. Bye-laws as to slaughter-houses.

(2) 10 & 11 Vict. c. 89, ss. 68, 69. Bye-laws as to hackney carriages and public bathing.

"Confirming authority" means, as regards bye-laws, rules, and regulations confirmed prior to the nineteenth day of August one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act and confirmed prior to the tenth day of August one thousand eight hundred and seventy-two, one of Her Majesty's principal Secretaries of State; and as regards other bye-laws, rules, and regulations, the Local Government Board (*b*).

(3) 10 & 11 Vict. c. 14, s. 42. Bye-laws as to markets.

Confirmation of bye-laws.

3. Every bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any local Act, or any provisional order

or any Act confirming such provisional order, and every rule and regulation made or to be made by an urban authority under section forty-eight of the Tramways Act, 1870 (*c*), shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval. Sect. 3.

4. This Act shall not invalidate the confirmation, allowance, or approval of any bye-law, rule, or regulation confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, if such bye-law has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of bye-laws in any of the incorporated Acts, such bye-law is required to be confirmed, allowed, or approved otherwise than by the confirming authority. Saving clause.

(*a*) The Towns Improvement Clauses Act, 1847, s. 128, provides that the commissioners, *i.e.*, the urban authority, shall from time to time, by bye-laws to be made and confirmed *in manner hereinafter provided*, for the regulation of slaughter-houses, &c. The manner provided by that Act is set out in sections 200–209, which are not, however, incorporated with the Public Health Act, but it would seem, notwithstanding, that these provisions applied to bye-laws made by a local authority pursuant to the Public Health Act, 1875. See *Wallasey Tramway Company* v. *Wallasey Local Board*, 47 J. P. 821. However this may be, section 202 required the bye-laws to be confirmed in the prescribed manner, and if no manner of confirmation were prescribed him, by a judge of the superior courts or by the justices in quarter sessions. In order to remove all doubts with regard to the application of these provisions to bye-laws made by a local authority under the Public Health Act, 1875, the Act provides that no confirmation shall be necessary in future except that of the Local Government Board. Provision is also made for the validity of past confirmation by the Secretaries of State under former Public Health Acts or local Acts. The foregoing remarks apply *mutatis mutandis* to the other incorporated enactments, all of which are set out in the Appendix, *post*.

(*b*) As to the provisions of the Public Health Act, 1875, with regard to the confirmation of bye-laws, see section 184, *ante*, p. 216.

(*c*) See the section in the Appendix, *post*.

THE PUBLIC HEALTH (OFFICERS) ACT, 1884.

(47 & 48 Vict. Cap. 74.)

An Act to amend the Public Health Act, 1875, *with respect to the Officers of Local Authorities.* [14th August, 1884.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Public Health (Officers) Act, 1884, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

Restriction on recovery of penalties.

2. Proceedings for the recovery of any penalty under the hundred and ninety-third section of the principal Act shall not be taken except with the consent in writing of the Attorney-General.

See the Public Health Act, 1875, s. 193, *ante*, p. 224. That section forbids officers of a local authority to contract with such authority or to accept any fee or reward other than their proper salaries. This provision is enforced by a penalty of 50*l.*, which the section provided might be recovered by *any person*, and these words were held in *Fletcher* v. *Hudson*, *ante*, p. 292, to enable any person to recover it, whether he was aggrieved or not, and whether or not he had obtained the leave of the Attorney-General under section 253, *ante*, p. 292. In so far as the proceedings for the penalty are concerned, the consent of the Attorney-General must now be obtained. It is to be observed, however, that the above Act does not refer to the forfeiture of office and the subsequent incapacity to hold office. It may be that such forfeiture takes places, and such incapacity arises on the recovery of the penalty. *Sed quære?*

APPENDIX.

APPENDIX.

THE QUARANTINE ACT, 1825.

(6 GEO. 4, CAP. 78) (*a*).

An Act to repeal the several Laws relating to the performance of Quarantine, and to make other Provisions in lieu thereof.

[27th June, 1825.]

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WHEREAS it is expedient to repeal the several laws relating to the performance of quarantine, and to make other provisions in lieu thereof (*b*).

What vessels shall be liable to quarantine.

II. And be it enacted, that from and after the first day of *June*, one thousand eight hundred and twenty-five, all vessels, as well His Majesty's ships of war as others, coming from or having touched at any place from whence His Majesty, his heirs or successors, by and with the advice of his or their privy council, shall have adjudged and declared it probable that the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects may be brought, and all vessels and boats receiving any person, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever, from or out of any vessel so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles, shall have come or been brought in such vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such vessels at any port or place in the United Kingdom, or the Islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, and whether such vessels were or were not bound to any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandize, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever on board of any vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving vessels or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this Act, and of any order or orders which shall be made by His Majesty, his heirs and successors, by and with the advice of his or their privy council, concerning quarantine and the prevention

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(*a*) See the Public Health Act, 1875, s. 343, *ante*, p. 383, and Schedule III. (re-enacted statutes), in which reference is made to this Act.

(*b*) Section 1 was repealed by the Statute Law Revision Act, 1873, 36 & 37 Vict. c. 91.

of infection, from the time of the departure of such vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles shall have been received on board respectively; and all such vessels and boats as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandize, and all other articles as aforesaid, whether coming or brought in such vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandize, and other articles as aforesaid, on board such receiving vessel or boat as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time, and in such manner as shall from time to time be directed by His Majesty, his heirs or successors, by his or their order or orders in council, notified by proclamation, or published in the *London Gazette;* and that until such vessels and boats, persons, goods, wares, and merchandize, and other articles as aforesaid, shall have respectively performed, and shall be duly discharged from quarantine, no such person, goods, wares, or merchandize, or other articles as aforesaid, or any of them, shall, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, come or be brought on shore, or go and be put on board any other vessel or boat, in order to come or be brought on shore in any such port or place, although such vessels so coming from such infected place as aforesaid may not be bound to any port or place in the United Kingdom, or the islands aforesaid, unless in such manner and in such cases, and by such license as shall be directed or permitted by such order or orders made by His Majesty, his heirs or successors, in council, as aforesaid; and all such vessels and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandize, and other articles as aforesaid, whether coming or brought in such vessels or boats, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and although such vessels or boats shall not be bound to any port or place in the United Kingdom, or the islands aforesaid; and all commanders, masters, or other persons, having the charge or command of any such vessels or boats, whether coming from any infected place, or being otherwise liable to quarantine as aforesaid, shall be subject to all provisions, rules, regulations, and restrictions contained in this Act, or in any order or orders which shall be made by His Majesty, his heirs and successors, in council, as aforesaid, concerning quarantine and the prevention of infection, and to all the pains, penalties, forfeitures, and punishments contained in this Act, for any breach or disobedience thereof, or of any order or orders of His Majesty in council made under the authority thereof (*c*).

(*c*) These and the other provisions of this Act are now to apply to every vessel having on board any person affected with a dangerous or infectious disease, though such vessel has not commenced her voyage or has come from or is bound to a port in the United Kingdom. See the Public Health Act, 1875, Schedule V., Part III., *ante*, p. 443. Other provisions as to persons arriving in ships from infected places are contained in the Customs Laws Consolidation Act, 1876, 39 & 40 Vict. c. 36, s. 234.

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Power for privy council to order vessels coming from America or the West Indies, when the yellow fever, &c., prevails there, to go to certain places without being liable to quarantine.

III. And be it further enacted, that it shall and may be lawful for His Majesty, his heirs and successors, by his or their order in council, or for the lords or others of his or their privy council, or any two or more of them, by their order from time to time, as often as they may see reason to apprehend that the yellow fever or other highly infectious distemper prevails on the continent of *America*, or in the *West Indies*, to require that every vessel coming from or having touched at any port or place on the continent of *America* or in the *West Indies*, shall come to an anchor at certain places to be appointed from time to time by the commissioners of His Majesty's customs (who are hereby authorized to make such appointment), for the purpose of having the state of health of the crew of such vessel ascertained before such vessel shall be permitted to enter the port whereto she shall be bound, or any other port of the United Kingdom; but that such vessel shall not be deemed liable to quarantine unless it shall be afterwards specially ordered under that restraint.

IV. (*a*).

Goods and vessels specified in any order of council subject to quarantine, as also all vessels arriving from any port under suspicious circumstances as to infection.

V. And whereas certain sorts of goods and merchandize are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into the United Kingdom, or the islands aforesaid: Be it enacted, that all such goods and merchandize as shall be particularly specified for that purpose in any order or orders made by His Majesty, his heirs or successors, in council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in the United Kingdom, or the islands aforesaid, from any foreign country or place, in any vessel whatever, and the vessels in which the same shall be brought, and also all vessels which shall arrive from any port or place whatever, under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of His Majesty, his heirs or successors, in council as aforesaid, respecting the same.

The privy council may make such order as they shall think necessary upon emergencies.

VI. And be it further enacted, that it shall and may be lawful for the lords and others of His Majesty's privy council, or any two or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases, with respect to any vessel arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such vessels shall not have come from any place from which His Majesty, his heirs or successors, by and with the advice of his privy council, may have adjudged and declared it probable that the plague or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandize, and other articles as aforesaid on board the same, and in case of any infectious disease or distemper appearing or breaking out in the United Kingdom, or the islands aforesaid, to make such orders and give such direction, in order to cut off all communication between any persons infected with any

(*a*) This section applies to Ireland only.

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such disease or distemper, and the rest of His Majesty's subjects, as shall appear to the said lords or others of His Majesty's privy council, or any two or more of them, to be necessary and expedient for that purpose, and likewise to make such orders as they shall see fit, for shortening the time of quarantine to be performed by particular vessels or particular persons, goods, wares, merchandize, or any other articles, or for absolutely or conditionally releasing them or any of them from quarantine; and all such orders so made by the lords or others of the privy council, or any two or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes, as well with respect to the commander, master, or other person having the charge of any vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments to which they may respectively become liable, as any order or orders made by His Majesty, his heirs or successors, by and with the advice of his or their privy council, concerning quarantine, notified by proclamation or published in the *London Gazette*.

Regulations for vessels in which infection shall appear within or without the streights of Gibraltar.

VII. And be it further enacted, that if the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any vessel within or without the streights of *Gibraltar*, then the commander, master, or other person having the charge or command thereof, shall immediately proceed to such place as His Majesty, his heirs or successors, by and with the advice of his or their privy council, shall from time to time direct and appoint; where being arrived, he shall make known his case to some officer of the customs there, who shall with all possible speed send intelligence thereof to the commissioners of the customs in the port of *London* (*b*), to the end that such precautions may be used to prevent the spreading of the infection, as the case shall require; and the said vessel shall there remain until directions shall be given thereto by the lords or others of His Majesty's privy council, or any two or more of them; nor shall any of the crew or passengers on board thereof go on shore; and such master and every other person on board such vessel shall obey such directions as he shall receive from the lords and others of His Majesty's privy council, or any two or more of them as aforesaid; and the said commander, master, or any other person on board such vessel as aforesaid, who shall not act conformably to the provisions and regulations herein directed, or shall act in disobedience to such directions as shall be received on board such vessel from the lords or others of the privy council, or any two or more of them as aforesaid, shall forfeit the sum of one hundred pounds (*c*).

Masters of vessels liable to quarantine to make signals on meeting other vessels at sea, or being within two leagues of the United Kingdom, or Guernsey, &c., on penalty of 100*l*.

VIII. And be it further enacted, that every commander, master, or other person having the charge of any vessel liable to the performance of quarantine, shall be and is hereby required, at all times, when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of *Guernsey*,

(*b*) See the Public Health Act, 1875, s. 291, *ante*, p. 342.

(*c*) This penalty may be reduced. See 29 & 30 Vict. c. 90, s. 52, re-enacted in Public Health Act, 1875, Schedule III. *ante*, p. 383. See also in next note. As to the person in whose name the proceedings are to be taken, see section 33, *post*.

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Jersey, *Alderney*, *Sark*, or *Man*, to hoist a signal to denote that his vessel is liable to the performance of quarantine, which signal shall in the day-time, if the said vessel shall have a clean bill of health, a large yellow flag, of six breadths of bunting, at the maintop mast-head, and if such vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball, entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night-time the signal shall in both cases be a large signal lanthorn with a light therein (such as is commonly used on board His Majesty's ships of war), at the same mast-head; and such commander, master, or other person shall keep such signals respectively, as the case shall be, hoisted during such time as the said vessel shall continue within sight of such other vessel, or within two leagues of the said coasts or islands, and while so in sight, or within such distance, until such vessel so liable to quarantine as aforesaid shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person having charge of such ship or vessel so liable to the performance of quarantine shall forfeit and pay for every such offence the sum of one hundred pounds (*a*).

Masters of vessels to hoist certain signals when plague or infectious disease on board, on penalty of 100*l*.

IX. And be it further enacted, that every commander, master, or other person having the charge of any vessel on board whereof the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects shall actually be, shall be and is hereby required at all times when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, to hoist a signal to denote that his vessel has the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects actually on board thereof, which signal shall be in the day-time a flag of yellow and black, borne quarterly, of eight breadths of bunting, at the maintop mast-head; and in the night-time, the signal shall be two large signal lanthorns, such as are commonly used on board of His Majesty's ships of war, one over the other, at the same mast-head; and such commander, master, or other person shall keep such signal hoisted during such time as the said vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall continue within sight of such other vessel, or within two leagues of the coasts or islands aforesaid, while so in sight or within such distance, until such vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged

(*a*) The 39 & 40 Vict. c. 36, s. 234, provides that the privy council may from time to time require that no person shall land from a ship coming from a place infected with yellow fever or other infectious disease until the officers of customs have examined into the state of health of the persons on board and given permission to land, any person being liable to a penalty of 100*l*. for disobedience; and the master or pilot is to be liable to the like penalty for not hoisting the prescribed signal; these penalties, as well as penalties under 6 Geo. 4, c. 78, to be subject to reduction to any sum not exceeding 100*l*., recoverable before a stipendiary or two justices, who may commit on default of payment for a term not exceeding six months.

from the performance thereof; on failure thereof such commander, master, or other person having charge of such vessel shall forfeit and pay for every such offence the sum of one hundred pounds (*b*).

Penalty on persons hoisting signals when not liable, 50*l*.

X. And be it further enacted, that if any commander, master, or other person having the charge or command of any vessel, and knowing that the same is not liable to the performance of quarantine, shall hoist such signal as aforesaid, or either of them, by day or night respectively, such commander or other person as aforesaid shall forfeit and pay the sum of fifty pounds (*c*).

Masters of vessels, on their arrival from foreign parts, to give to the pilots an account of the places at which they shall have loaded and touched, on penalty of 100*l*.

XI. And be it further enacted, that from and after the first day of *July*, one thousand eight hundred and twenty-five, as to all vessels arriving from any places beyond the *Cape of Good Hope*, or *Cape Horn* in *South America*, and after the first day of *August*, one thousand eight hundred and twenty-five, as to all vessels arriving from any parts of *Africa* or *America* not beyond those capes, and from the *West Indies* and *Mediterranean*, and from and after the first day of *June*, one thousand eight hundred and twenty-five, as to all vessels arriving from any other places, every commander, master, or other person having the charge of any vessel coming from foreign parts, shall give to the pilot who shall go on board such vessel a written paper, containing a true account of the names of the place and country at which such vessel shall have loaded, and also of all the places at which any such vessel shall have touched on the homeward voyage, on pain of forfeiting the sum of one hundred pounds (*c*) for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in council, made after the departure of any vessel from the United Kingdom and the said islands, and then in force, vessels coming from any place mentioned in any such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person aforesaid, of such vessel, on pain of forfeiting the sum of one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal, according to the provisions of this Act, and under the penalties in this Act contained for any neglect or refusal in respect of hoisting such signals (*c*).

Pilots to give notice of any proclamation or order in council requiring the performance of quarantine, on penalty of 100*l*.

Pilot to give notice if any articles be on board liable to quarantine on penalty of 100*l*.

XII. And be it further enacted, that every commander, master, or other person having the charge of any vessel coming from foreign parts, which shall not be liable to quarantine in respect of the place from whence such vessel comes, shall give to the pilot who shall go on board of such vessel a written paper, containing a true account of the different articles composing the cargo of such vessel, on pain of forfeiting the sum of fifty pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in council then in force, vessels having on board any of the articles mentioned in such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person having the charge of such vessel, on pain of forfeiting one hundred pounds for any neglect therein,

(*b*) See note (*c*), p. 473, and note (*a*), p. 474.
(*c*) See note (*c*), p. 473.

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Penalty on pilots conducting vessels to any other place than that appointed for their reception, 200*l.*

and such commander or other person shall thereupon hoist a signal, according to the provisions and under the respective penalties in this Act contained, for any neglect or refusal in respect of hoisting such signals; and in case any pilot shall bring or cause to be brought or conducted any vessel liable to the performance of quarantine, into any place which is not or shall not be specially appointed for the reception of vessels so liable, after receiving such paper as aforesaid, whereby it shall have been made appear that such vessel was liable to the performance of quarantine, or without requiring and receiving such paper as aforesaid, unless compelled thereto by stress of weather, adverse winds, or accidents of the sea, such pilot shall for every such offence forfeit and pay the sum of two hundred pounds (*a*).

Pilot to bring to at request of officer of customs, on penalty of 100*l.*

XIII. And be it further enacted, that if any pilot being on board, or any commander, master, or other person having the charge of any vessel coming from foreign parts, whether such vessel shall be liable to quarantine or not, shall be required by any officer of the customs, authorized to act in the service of quarantine, to bring to such vessel, to the end that the commander, master, or other person having the charge thereof may be interrogated, according to the provision of this Act, and shall neglect or refuse to bring to such vessel, as soon as it can be done with safety, in obedience to such requisition, every such pilot, commander, master, or other person having the charge of any such vessel shall for every such offence forfeit and pay the sum of one hundred pounds (*a*).

For better ascertaining whether vessels be actually infected, or the persons on board liable to orders touching quarantine.

XIV. And to the end that it may be better known whether any vessel be actually infected with the plague or other infectious disease or distemper as aforesaid, or whether such vessel, or the mariners or passengers coming, or the cargo imported in the same, are liable to any orders touching quarantine, be it further enacted, that when any country or place shall be known or suspected to be infected with the plague or other infectious disease or distemper as aforesaid, or when any order or orders shall be made by His Majesty in council concerning quarantine and the prevention of infection as aforesaid, then and in such case, as often as any vessel shall attempt to enter into any port or place in the United Kingdom, or of the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, whether such port shall have been appointed for the performance of quarantine or not, the superintendent or assistant at such port or place, or if not, the principal officer of His Majesty's customs at such port or place, or such officer of the customs as shall be authorized to act in that behalf, shall go off to such vessel, and shall, at a convenient distance from such vessel, demand of the commander, master, or other person having charge of such vessel, and such commander, master, or other person shall, upon such demand, give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall by such superintendent or his assistant, or other officer of the customs authorized as aforesaid, be required, to all such questions or interrogatories as shall be put to him by virtue and in pursuance of such regulations and directions as His Majesty by order in council shall be pleased to prescribe; and in case such commander or master or other person having charge of such vessel shall, upon such demand made as aforesaid, refuse to make a true discovery in any of the particulars concerning which he shall be

Masters of vessels refusing to answer interrogatories, &c., to forfeit 200*l.*

(*a*) See note (*c*), p. 473.

interrogated in manner aforesaid, or in case he shall not be required to answer such questions or interrogatories upon oath, shall give a false answer to any such question or interrogatory as aforesaid, such commander, master, or other person having charge of such vessel for every such offence shall forfeit and pay the sum of two hundred pounds (*b*).

Vessels subject to quarantine arriving at any port than that at which it ought to be performed, may be forced to repair to the appointed place.

XV. And be it further enacted, that in case it shall appear upon such examination or otherwise, that such vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrived, or at which it attempts to enter as aforesaid, is not the port or place where it ought to perform quarantine, in which case it shall and may be lawful to and for the officers of any of His Majesty's ships of war, or any of His Majesty's forts or garrisons, and all other His Majesty's officers, upon notice thereof given to them, or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required to oblige such vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such vessel, or by any other kind of necessary force whatsoever; and in case any such vessel shall come from, or shall have touched at any place infected by the plague or such other infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague or other such infectious disease or distemper as aforesaid, and the commander, master, or other person having charge of such vessel, knowing that the place from whence he came, or at which he had touched as aforesaid, was infected with the plague or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague or such other infectious disease or distemper as aforesaid, shall refuse or omit to disclose the same upon such examination as aforesaid, or shall wilfully omit to hoist the signal hereinbefore directed, to denote that his vessel is liable to the performance of quarantine, at the times and on the occasions herein directed with respect to the same, such commander, master, or other person having charge of such vessel shall forfeit the sum of three hundred pounds (*b*).

Masters of vessels that have touched at infected places, &c., omitting to disclose the same, or omitting to hoist the prescribed signal, to forfeit 300*l.*

Commanders to deliver up bills of health, manifests, and log-book to the superintendent of quarantine, on penalty of 100*l.*

XVI. And be it further enacted, that every commander, master, or other person having charge of any vessel which shall be ordered to perform quarantine as aforesaid, shall forthwith, after his arrival at the place appointed for the performance of quarantine, deliver on demand to the superintendent of quarantine or his assistant, or other officer of the customs, authorized to act in that behalf, and which superintendent, assistant, or other officer as aforesaid is hereby required to make such demand, his bill of health and manifest, together with his log-book and journal, under pain of forfeiting the sum of one hundred pounds if he shall wilfully refuse or neglect so to do (*b*).

Penalty on masters, &c., quitting vessels, or permitting persons to

XVII. And be it further enacted, that if any commander, master, or other person having charge of any vessel liable to perform quarantine, and on board of which the plague or other infectious disease or distemper shall not then have appeared, shall himself quit, or shall know-

(*b*) See note (*c*), p. 473.

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quit them, or not conveying same to the appointed places, 400*l.*

ingly permit or suffer any seaman or passenger coming in such vessel to quit such vessel by going on shore, or by going on board any other vessel or boat, before such quarantine shall be fully performed, unless by such licence as shall be granted by virtue of any order in council to be made concerning quarantine as aforesaid, or in case any commander or other person having charge of such vessel shall not, within a convenient time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed into the place or places appointed for such vessel and lading to perform quarantine; then and in every such case every such commander, master, or other person as aforesaid, for every such offence shall forfeit and pay the sum of four hundred pounds (*a*); and if any such person coming in any such vessel liable to quarantine (or any pilot or other person going on board the same, either before or after the arrival of such vessel at any port or place in the United Kingdom, or the islands aforesaid), shall, either before or after such arrival, quit such vessel, unless by such licence as aforesaid, by going on shore in any port or place in the United Kingdom, or the islands aforesaid, or by going on board any other vessel or boat, with intent to go on shore as aforesaid, before such vessel so liable to quarantine as aforesaid shall be regularly discharged from the performance thereof, it shall and may be lawful for any person whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such vessel so liable to quarantine to return on board the same; and every such pilot or other person so quitting such vessel so liable to quarantine shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of three hundred pounds (*a*).

Penalty on persons coming in such vessels, or going on board, and quitting them before discharged from quarantine, to suffer imprisonment for six months, and forfeit 300*l.*

For punishing disobedience or refractory behaviour in persons under or liable to quarantine, or persons having intercourse with them

XVIII. And whereas disobedience or refractory behaviour in persons under quarantine or liable to the performance of quarantine, or in other persons who may have had any intercourse or communication with them, may be attended with very great danger to His Majesty's subjects: Be it further enacted, that all persons liable to perform quarantine, and all persons having had any intercourse or communication with them, whether in vessels or in a lazaret or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendent of quarantine, or his assistant, or from the principal officer of the customs at any port or place where there is no such superintendent or assistant, or from any other officer of the customs authorized to act in that behalf, and the said officers are hereby empowered and required to enforce all necessary obedience to the said orders, and in case of necessity to call in others to their assistance, and all persons so called in are hereby required to assist accordingly; and such officers shall and they are hereby empowered and required to compel all persons liable to perform quarantine as aforesaid, and persons having had any intercourse or communication with them, to repair to such lazaret, vessel, or place, and to cause all goods, wares, and merchandize, and other articles comprised within any such orders to be made as last aforesaid, to be conveyed to such lazaret, vessel, or place duly appointed in that behalf, in such manner and according to such directions as shall be made by order of His Majesty in council as aforesaid, or of the lords or others of the privy council, or of

(*a*) See note (*c*), p. 473.

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any two or more of them; and if any person or persons liable to perform quarantine as aforesaid, or any person or persons having had any intercourse or communication with him, her, or them, shall wilfully refuse or neglect to repair forthwith, when required and directed so to do by such officers as aforesaid, to the said lazaret, vessel, or place duly appointed in that behalf, or having been placed in the said lazaret, vessel, or place, shall escape or attempt to escape out of the same before quarantine duly performed, it shall and may be lawful to and for the said quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, and each of them, and they are hereby respectively required, by such necessary force as the case shall require, to compel every such person so refusing or neglecting as aforesaid, and every such person so escaping or attempting to escape as aforesaid, to repair or return to such lazaret, vessel, or place so appointed as aforesaid; and every person so refusing or neglecting to repair forthwith as aforesaid to the said lazaret, vessel, or place, and also every person actually escaping as aforesaid, shall forfeit the penalty of two hundred pounds (*b*).

Persons refusing to repair to the lazaret or vessel, to forfeit 200*l.*

XIX. And be it further enacted, that it shall be lawful for any constable, headborough, tithingman, or other peace officer, or any other person, to seize and apprehend any person that shall, contrary to the provisions of this Act, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret, vessel, or place appointed in that behalf, for the purpose of carrying such person before any justice of the peace or magistrate; and it shall be lawful for any such justice of the peace or magistrate to grant his warrant for the apprehending and conveying of any such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody (not being a public gaol), and under such restrictions as to having any communication with any other persons, as may in the discretion of any justice of the peace or magistrate (calling to his aid, if he shall see fit, any medical person) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the privy council as to the disposal of any such person, and to make any further order, or grant any further warrant that may be necessary in that behalf.

Persons quitting vessels liable to perform quarantine, &c., may be seized.

XX. And whereas it may be necessary for the public security to prevent all communication whatever with vessels performing quarantine: Be it therefore further enacted, that it shall and may be lawful to and for His Majesty, his heirs or successors, by his or their order or orders in council, notified by proclamation or published in the *London Gazette*, to prohibit all persons, vessels, and boats whatsoever, from going, under any pretence whatsoever, within the limits of any station which by any order or orders in council as aforesaid has been or may be assigned for the performance of quarantine; and if any person whatsoever, after such notification or publication of any such order or orders in council, shall

Intercourse with stations allotted for quarantine of vessels, may be prohibited by order in council.

(*b*) See note (*c*), p. 473.

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presume, under any pretence whatsoever, to go with any vessel or boat within the limits of any such station, he or she shall for every such offence forfeit and pay the sum of two hundred pounds (*a*).

Penalty on persons embezzling goods performing quarantine, neglecting or deserting their duty, or permitting persons, vessels, &c., to depart without authority, or giving false certificates or damaging goods.

XXI. And be it further enacted, that if any officer of His Majesty's customs, or any other officer or person whatsoever, to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other breach or neglect of his duty in respect of the vessels, persons, goods, or articles performing quarantine, every such officer or person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thence incapable to hold or enjoy the same, or to take a new grant thereof; and every such officer and person shall forfeit and pay the sum of two hundred pounds (*a*); and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and willingly permit any person, vessel, goods, or merchandize to depart or be conveyed out of the said lazaret, vessel, or other place as aforesaid, unless by permission under an order of His Majesty, by and with the advice of his privy council, or under an order of two or more of the lords or others of his privy council; or if any person hereby authorized and directed to give a certificate of a vessel having duly performed quarantine or airing, shall knowingly give a false certificate thereof, every such person so offending shall be guilty of felony; and if any such officer or person shall knowingly or wilfully damage any goods performing quarantine under his direction, he shall be liable to pay one hundred pounds damages and full costs of suit to the owner of the same.

Vessels from the Mediterranean, Turkey, or Africa, having undergone examination and released from quarantine, to be admitted to entry upon producing a certificate of such examination.

XXII. And be it further enacted, that if any vessel arriving from the *Mediterranean*, or from any port in *Turkey* or *Africa*, shall have undergone examination by the proper officer of quarantine, and upon a report of such examination being made to the lords or others of His Majesty's privy council, their lordships shall think proper to direct the release of such vessel from the performance of quarantine, it shall be lawful for such officer and he is hereby required to grant to the master or person having the charge or command of such vessel, a certificate in writing of such examination and release, and upon the production of such certificate to the collector or principal officer of His Majesty's customs, at any port in the United Kingdom, such vessel shall be admitted to entry without being liable to any further restraint.

After proof of performance of quarantine, and proper certificate to that effect, vessels or persons shall not be liable to further detention.

XXIII. And be it further enacted, that after quarantine shall have been duly performed by any vessel, person or persons, obliged to perform quarantine as aforesaid, according to this Act, and to such order or orders made as aforesaid, and upon proof to be made by the oaths of the master or other person having charge of such vessel, and of three or more of the persons belonging thereto, or upon proof to be made by the oaths of two or more credible witnesses, before the collector or principal officer of the customs at the port where such quarantine shall be per-

(*a*) See note (*c*), p. 473.

formed, or at the port nearest thereto, or before the superintendent of quarantine, or his assistant at the quarantine station, or before any justice of the peace living near to the port or place, or when such quarantine shall have been performed within any of the said isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, before any two jurats or magistrates of any of the said isles respectively, that such vessel, and all and every such person and persons respectively, have duly performed quarantine as aforesaid, and that the vessel and all and every person and persons are free from infection, and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said vessel, or person acting for him, then and in the said respective cases such collector or principal officer of the customs, or the superintendent of quarantine, or his assistant, or such justice of the peace, or such jurats or magistrates as aforesaid, respectively, are hereby required to give a certificate thereof, and thereupon such vessel, and all and every such person or persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account, for which such vessel, person or persons, shall have performed quarantine as aforesaid.

Goods liable to perform quarantine shall be opened and aired, as directed by order in council, and proof thereof to be made, &c.

XXIV. And be it further enacted, that all goods, wares, and merchandize, and other articles liable to quarantine as aforesaid, shall be opened and aired in such place or places, and for such time and in such manner as shall be directed by His Majesty, his heirs and successors, by such order or orders to be made as aforesaid, and after such orders shall have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandize and all other articles shall have been opened and aired, and of one of the guardians, or if there be no guardians, then one of the officers authorized by the commissioners of customs to act in the service of quarantine in such lazaret or vessel, or if there be no such officer, then by the oaths of two or more credible witnesses serving in the said lazaret or vessel, before the superintendent of quarantine or his assistant, in case such opening and airing shall be had at a port or place where such superintendent or assistant shall be established, or otherwise before the principal officer of the customs authorized to act in the service of quarantine at such port or place, which oath such superintendent, assistant, or principal officer is hereby authorized to administer; and such superintendent, assistant, or principal officer, as the case may be, shall grant a certificate of such proof having been made, and upon production of such certificate to the proper officer of the customs, such goods, wares, and merchandizes, and other articles, shall be liable to no further restraint or detention, either at the port or place where such quarantine shall have been performed, or at any other place whereto they be afterwards conveyed.

Persons forging or uttering false certificates required by order in council, guilty of felony.

XXV. And be it further enacted, that if any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of His Majesty, his heirs or successors in council, now in force or hereafter to be made touching quarantine, or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully

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utter and publish any such certificate with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony.

Penalty on persons landing goods, &c., from vessels liable to perform quarantine, or receiving them, or secreting them from vessels performing quarantine, 100*l*.

XXVI. And be it further enacted, that if any person shall land or unship, or shall move in order to the landing or unshipping thereof, any goods, wares, or merchandize, packets, packages, baggage, wearing apparel, books, letters, or other articles from on board any vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they have been so landed or unshipped, every such person shall forfeit and pay the sum of five hundred pounds; and if any person or persons shall clandestinely convey or secrete, or conceal for the purpose of conveying any letters, goods, wares, or merchandize or other articles as aforesaid, from any vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandize, or other articles as aforesaid shall be performing quarantine, every such person so offending as last aforesaid shall forfeit the sum of one hundred pounds (*a*).

His Majesty in certain cases may prohibit vessels under 100 tons from sailing until bond be given by the master with certain conditions.

XXVII. And be it further enacted, that in case it shall at any time happen that any part of the United Kingdom, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, or *France*, *Spain*, or *Portugal*, or the *Low Countries*, shall be infected with the plague, or any other infectious disease or distemper as aforesaid, it shall and may be lawful to and for His Majesty, his heirs and successors, by his or their proclamation, to prohibit or restrain all vessels and boats under the burthen of one hundred tons from sailing or passing out of any port or place of the United Kingdom, or the isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, or any of them, until security be first given by the master of every such vessel or boat respectively, to the satisfaction of the principal officers of the customs, or the chief magistrate of the port or place from whence such vessel or boat shall sail, by bond taken by such officer or magistrate, to the king, his heirs or successors, with sufficient sureties in the penalty of two hundred pounds, with condition, that if such vessel or boat shall not go to or touch at any country, port, or place to be mentioned for that purpose in such proclamation, and if neither the master or other person having charge of such vessel or boat, nor any mariner or passenger in such vessel or boat, shall, during the time aforesaid, go on board any other vessel at sea, and such master or other person having charge of such vessel or boat shall not permit or suffer any person or persons to come on board such vessel or boat at sea from any other vessel, and shall not during the time aforesaid receive any goods or merchandize whatsoever out of any other vessel, then such bond shall be void; for the making of which bond no fee or reward whatsoever shall be taken; and in case any vessel or boat for which such security shall be required by such proclamation shall set sail or pass out of any port or place of the United Kingdom, or the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, or any of them respectively, before security be given as aforesaid, every such vessel or boat so sailing or passing out of any port or place contrary to the true intent and meaning of this Act, together

Penalty for sailing without giving such security, forfeiture of vessel, &c.

(*a*) See note (*c*), p. 473.

with her tackle, apparel, and furniture, shall be forfeited to His Majesty, his heirs and successors, and the master of and every mariner sailing in such vessel or boat shall severally forfeit and pay the sum of two hundred pounds (*b*).

Power to consuls, &c. to administer oaths.

XXVIII. And be it further enacted, that the consuls and vice-consuls of His Majesty, his heirs and successors, shall and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

Persons authorized to take examinations may administer oaths, and persons swearing falsely or procuring others so to do shall be deemed guilty of perjury.

XXIX. And be it further enacted, that in all cases wherein by virtue of this Act, or any other Act hereafter to be made touching quarantine, any examination or answer shall be taken or made upon oath, the person who shall be authorized and required to take such examinations and answers shall and may be deemed to have full power and authority to administer such oaths; and if any person who shall be interrogated or examined shall wilfully swear falsely to any matter concerning which such person shall depose or make oath on such examination, or in such answer, or if any person shall procure any other person so to do, he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of and shall be liable to be prosecuted for perjury or subornation of perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law in such case respectively made and provided.

Superintendents at ports to be appointed. Principal officer of the customs to act as superintendent of quarantine in case of absence, &c.

XXX. And be it further enacted, that all superintendents of quarantine at the several ports, and their assistants, shall and may be appointed by any instrument signed by the commissioners of customs for the time being; and everything required to be done and performed by the superintendent of quarantine, or his assistant, may, in case of the absence or sickness of such superintendent or assistant, be done and performed by such principal officer of the customs as shall be authorized to act in that behalf.

Publication in the *London Gazette* of orders of council, &c., sufficient notice.

XXXI. And be it further enacted, that the publication in the *London Gazette* of any order in council, or of any order by any two or more of the lords or others of His Majesty's privy council, made in pursuance of this Act, or His Majesty's royal proclamation made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

Recovery and application of penalties.

XXXII. And be it further enacted, that all forfeitures and penalties that shall be incurred by reason of any offence committed against this Act shall and may be recovered by suit in any of His Majesty's courts of record in *England* or *Ireland*, in which no essoign or wager of law, or more than one imparlance, shall be granted, or in *Scotland* by summary action in the court of session, or by prosecution before the court of justiciary there, or by suit in any of His Majesty's courts in the islands of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*; and every such forfeiture and

(*b*) See note (*c*), p. 473.

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penalty shall belong and be given, two-thirds to the person who shall inform and sue for the same, and the remainder to His Majesty, his heirs and successors (*a*).

In whose name actions for penalties in England, Ireland, or Scotland must be prosecuted.

XXXIII. Provided always, and be it further enacted, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, information, or prosecution, or actions, bills, plaints, informations, or prosecutions, in any of His Majesty's courts in *England*, *Ireland*, or *Scotland*, or any proceeding or proceedings before any justice of the peace of any county, riding, division, city, town, stewartry, or place for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in council, or by two or more of the lords or others of His Majesty's privy council as aforesaid, unless the same be commenced, prosecuted, entered, or filed in the names of His Majesty's Attorney-General in *England* or *Ireland*, or Advocate in *Scotland* respectively, or under the direction of the commissioners of the customs, and in the name or names of some officer or officers of the customs in *England*, *Ireland*, or *Scotland* respectively; and if any action, bill, plaint, information, or prosecution, actions, bills, plaints, informations, or prosecutions, or any proceeding or proceedings before any justice as aforesaid, shall be commenced, prosecuted, entered, and filed in the name or names of any other person or persons than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

In prosecutions by officers of the customs the Attorney-General in England or Ireland, or Advocate in Scotland, may stop proceedings.

XXXIV. Provided also, and be it further enacted, that in case any prosecution, suit, complaint, or other proceeding as aforesaid, shall be commenced or depending by any officer or officers of the customs, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in council, or by any two or more of the lords or others of His Majesty's privy council as aforesaid, it shall and may be lawful for His Majesty's Attorney-General in *England* or *Ireland*, or Advocate in *Scotland*, respectively, to stop all further proceedings therein, as well with respect to the share of such fine, penalty, or forfeiture, fines, penalties, or forfeitures, to which any such officer or officers shall or may claim to be entitled, as to the share thereof belonging to His Majesty, if upon consideration of the circumstances under which any such fine, penalty, or forfeiture, fines, penalties, or forfeitures, may be incurred, it shall appear to them respectively to be fit and proper so to do.

Offences not being felony, and offences for which no specific penalty is

XXXV. And be it further enacted, that all offences committed against any of the provisions of this Act, for which no specific penalty, forfeiture, or punishment is provided by this Act, shall and may be tried, heard, and determined before any three justices of the peace of the

(*a*) These penalties may now be recovered before justices; see 39 & 40 Vict. c. 36, s. 234, quoted in note (*a*), *ante*, p. 476. The remedy by action, however, still remains; and the power of remission given to the Crown by 22 Vict. c. 32, does not apply to such penalties. See *Todd* v. *Robinson*, 53 L. J. Q. B. 251. As to the power to stay proceedings, see section 34, *supra*.

county, riding, division, city, or place where such offence or disobedience shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to such forfeiture and penalty not exceeding the sum of five hundred pounds for any offence, or to such imprisonment, not exceeding twelve months for any one offence, as shall in the discretion of the three justices who shall have heard and determined the same be judged proper; and such forfeiture and penalty shall be paid, two-thirds to the person suing for the same and the remainder to His Majesty, to be applied as the proceeds of other forfeitures and penalties are hereinbefore directed to be applied (*b*).

provided, may be determined before three justices, who may fine or imprison.

Application of penalties.

XXXVI. And be it further enacted, that in any prosecution, suit, or other proceedings against any person or persons whatsoever, for any offence against this Act, or any Act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by His Majesty, his heirs or successors, with the advice of his privy council, concerning quarantine and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by two or more of the lords or others of the privy council aforesaid, the answer or answers of the commander, master, or other person having charge of any vessel, to any question or interrogatories put to him by virtue and in pursuance of this Act, or of any Act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence, so far as the same relates or relate to the place from which such vessel shall come, or to the place or places at which such vessel touched in the course of the voyage, and where any vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or where there is no such superintendent or assistant, by the principal officer of the customs at any port or place, or other officer of the customs authorized to act in that behalf, they having been so directed to perform quarantine, may and shall be given and received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant in any such prosecution, suit, or other proceeding to show that the vessel did not come from or touch at any such place or places as is or are stated in the said answer or answers, or that such vessel, although directed to perform quarantine, was not liable to the performance thereof; and where any such vessel shall have in fact been put under quarantine at any port or place by the superintendent of quarantine or his assistant, or other officer of the customs authorized as aforesaid to act in that behalf, and shall actually be performing the same, such vessel shall in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this Act or any other Act which may hereafter be passed concerning quarantine and the prevention of infection, or any order or orders which shall be made by His Majesty in council, or any two or more of the lords or others of his privy council as aforesaid, be deemed and taken to be liable to quarantine, without proving in what manner or from what circumstance such vessel became liable to the performance thereof.

Answers of persons having the charge of vessels shall be received as evidence so far as relates to the places from which vessels came, or at which they touched, and the having been directed to perform quarantine shall be received as evidence that vessels were liable, unless proof be made to the contrary, and the performing quarantine shall be proof of vessels being liable to perform it.

(*b*) See the qualifications of these provisions in 39 & 40 Vict. c. 36, s. 234, cited in note (*a*), *ante*, p. 476.

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General issue.

XXXVII. And be it further enacted, that if any action or suit shall be commenced against any person or persons for anything done in pursuance or execution of this present Act, or of any order of council made by virtue thereof, the defendant or defendants in such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and in execution of the said Act; and if it shall appear so to have been done, then the jury shall find for the defendant or defendants; . . . and that no such action or suit shall be brought against any person for any matter or thing done in pursuance or execution of this Act, but within the space of six months after such matter or thing shall have been done.

Treble costs (*a*).

Limitation of actions.

THE POOR LAW AMENDMENT ACT, 1844.

(7 & 8 Vict. Cap. 101) (*b*).

An Act for the further Amendment of the Laws relating to the Poor in England. [9th August, 1844.]

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Commissioners may combine parishes and unions into districts for audit of accounts.

Election of district auditors.

Their powers and duties.

XXXII (*c*). . . . And the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor rates, and to all other matters relating to auditors for such districts, as they have under the said first recited Act with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods, or

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(*a*) This provision was repealed as to treble costs by 5 & 6 Vict. c. 97, s. 2.

(*b*) The few sections of this Act which are set out here relate to the audit of accounts, and are incorporated by the Public Health Act, 1875, ss. 247, 248, *ante*, pp. 282–287. See also on the same subject 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113; 42 Vict. c. 6, *post*.

(*c*) The first sentence of this section as it originally stood in the Act was repealed by 42 Vict. c. 6. The next part, which referred to the election of auditors, was repealed by 31 & 32 Vict. c. 122, s. 24, *post*. The subsequent passage, being the first part of the section as above set out, was repealed by the Statute Law Revision Act, 1874 (No. 2), 37 & 38 Vict. c. 96, in so far as it relates to the power of the commissioners with regard to the salaries of auditors.

chattels, found by him to be due from any person; and when any such auditor has so certified any money, books, deeds, papers, goods, or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods, and chattels, and in the case where there is no treasurer as aforesaid all moneys so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorized to receive the same; and if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such moneys, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first recited Act (*d*); and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods, or chattels may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things, in their hands. . . . (*e*).

(*d*) 4 & 5 Will. 4, c. 76, s. 99. That Act enables penalties and forfeitures to be levied upon conviction by distress and sale of the offender's goods, and in default of distress by commitment to prison for a term not exceeding three months. But a balance certified by the auditor is a debt only, and is barred by the bankruptcy of the debtor. *Reg.* v. *Master, ante*, p. 286. The sum certified is still to be recovered as a poor rate: 47 & 48 Vict. c. 43, s. 11. The justices act ministerially in enforcing the auditor's decision, and cannot inquire into the legality thereof. *Reg.* v *Linford*, 7 E. & B. 950; 21 J. P. 435; *Reg.* v. *Finnis*, 1 E. & E. 935; 28 L. J. M. C. 201; 5 Jur. (N.S.) 971. But the court will not compel justices to issue their warrant if there is an appeal pending against the disallowance. *Reg.* v. *Denbighshire JJ.*, 33 L. T. (O.S.) 145. See also as to the discretion of the court in compelling justices to enforce an auditor's certificate, *Reg.* v. *Brecknockshire JJ.*, 7 E. & B. 951; 21 J. P. 356.

(*e*) The concluding part of this section is inapplicable for the purposes of

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XXXIII. . . . . And it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury (*a*).

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Certiorari for auditor's allowances or disallowances.

XXXV. And be it enacted that if any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace, except that the condition of such recognizance shall be, to prosecute such *certiorari*, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary; and that on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been

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this work, and is therefore omitted. For the like reason the first part of section 33 is also omitted here.

(*a*) Section 34 applies only to poor law officers

improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit by the rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

Persons aggrieved may apply to commissioners who may issue orders thereupon.

XXXVI. Provided always, and be it enacted, that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of *certiorari*, to apply to the said commissioners (*b*) to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

THE COMPANIES CLAUSES ACT, 1845.

(8 Vict. Cap. 16 (*c*).)

An Act for consolidating in One Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature.

[8th May, 1845.]

Whereas it is expedient to comprise in one general Act sundry provisions relating to the constitution and management of joint stock companies, usually introduced into Acts of Parliament authorizing the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and con-

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(*b*) The appeal was, by 21 & 22 Vict. c. 98, s. 60, transferred to the Secretary of State, for whom the Local Government Board were substituted by 34 & 35 Vict. c. 70, *post*, and this provision is retained in the Public Health Act, 1875, s. 247, *ante*, p. 284.

(*c*) Certain of the sections of this Act are incorporated by some of the Acts included in this Appendix; for example, by the Baths and Wash-houses Act, 1847, 9 & 10 Vict. c. 74, s. 23, and the Public Libraries Act, 1855, 18 & 19 Vict. c. 70, s. 17. Only the sections so incorporated are here set out, but sections 1, 2, and 3 are also included in the present work, as these are necessary to be referred to in construing the incorporated sections.

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Act to apply to all companies incorporated by Acts hereafter to be passed.

sent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

Interpretations in this Act: "the special Act:"

"prescribed:"

"the undertaking:"

II. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows (*a*):

The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature which shall by the special Act be authorized to be executed.

Interpretations in this and the special Act.

III. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such constructing; (that is to say,) (*a*)

Number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender: Words importing the masculine gender only shall include females:

"Lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"Lease:" The word "lease" shall include an agreement for a lease:

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts" shall mean Her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require:

"Oath:" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County:" The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

(*a*) These clauses must be read in connection with the sections of the several Acts by which this Act is incorporated, as the interpretations here given are in some instances qualified.

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two justices the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions: "Justice:" "Two justices:"

The expression "the company" shall mean the company constituted by the special Act: "the company:"

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name: "Directors:"

The word "shareholder" shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and "Shareholder:"

The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk." "Secretary:"

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And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows (*b*):

Power to borrow money.

XXXVIII. If the company be authorized by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to re-borrow.

XXXIX. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

Evidence of authority for borrowing.

XL. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any

(*b*) Sections 38 to 55 inclusive are incorporated by the Baths and Washhouses Act, 1847, 9 & 10 Vict. c. 74, s. 23, *post*, and by the Public Libraries Act, 1855, 18 & 19 Vict. c. 70, s. 17, *post*.

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money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages and bonds to be stamped.

XLI. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this Act annexed, or to the like effect.

Rights of mortgagees.

XLII. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

Application of calls, notwithstanding mortgage.

XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Rights of obligees.

XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the moneys secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

Register of mortgages and bonds.

XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Transfers of mortgages and bonds to be stamped.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this Act annexed, or to the like effect.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage. Transfers of mortgages and bonds to be registered.

XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company. Payment of interest on moneys borrowed.

XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped. Transfers of interest to be stamped.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company. Repayment of money borrowed at a time fixed.

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in *England* or *Ireland*, and in some newspaper as after mentioned. Repayment of money borrowed where no time fixed.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond unless, on demand of Interest to cease on expiration of notice to pay off mortgage or bond.

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payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrers of interest, when to be enforced by appointment of a receiver.

LIII. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of principal and interest.

Appointment of receiver.

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Access to account books by mortgagees.

LV. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

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And with respect to the accountability of the officers of the company, be it enacted as follows (*a*):

Security to be taken from officers intrusted with money.

CIX. Before any person entrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company,

(*a*) Sections 109—114 inclusive are incorporated by the Baths and Washhouses Act, 1847, 9 & 10 Vict. c. 47, s. 23, *post*, and by the Public Libraries Act, 1855, 18 & 19 Vict. c. 70, s. 17.

shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office. **Appndx.**

Officers to account, on demand.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of; and together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

Summary remedy against parties failing to account.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof, when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to jail, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to deliver up documents, &c., to be imprisoned.

CXII. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to jail, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer about to abscond a warrant may be issued in the first instance.

CXIII. Provided always that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made,

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instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

CXIV. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

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And with respect to the making of bye-laws, be it enacted as follows (*a*):

Power to make bye-laws for the officers of the company.

CXXIV. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

Fine for breach of such bye-laws.

CXXV. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed as that penalties may be mitigated.

CXXVI. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice shall think fit.

Evidence of bye-laws.

CXXVII. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws in all cases of prosecution under the same.

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(*a*) Sections 124—127 inclusive are incorporated by the Baths and Washhouses Act, 1847, 9 & 10 Vict. c. 74, s. 23, *post*, subject, however, to the provisions of section 34 of that Act.

And with respect to the recovery of damages, not specially provided for, and penalties, be it enacted as follows (*b*):

Provision for damages not otherwise provided for.

CXLII. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

Distress against the treasurer.

CXLIII. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Method of proceeding before justices in questions of damages, &c.

CXLIV. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

CXLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special

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(*b*) Sections 142—160 inclusive are incorporated by the Baths and Washhouses Act, 1847, 9 & 10 Vict. c. 74, s. 23, *post*, and by the Public Libraries Act, 1855, 18 & 19 Vict. c. 70, s. 17. This part of the Act is printed as it remains unrepealed. The sections and parts of sections repealed were repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, of which section 5 provides for the substitution of the procedure under the Summary Jurisdiction Acts, 1848 and 1879.

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Act, or any Act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

CXLVI. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

CXLVII. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

CXLVIII. . . .

CXLIX. . . .

Distress how to be levied.

CL. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satifying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained (*a*).

Distress not unlawful for want of form.

CLI. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

(*a*) See the Summary Jurisdiction Act, 1879, s. 43.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish (*b*) . . . Application of penalties.

CLIII. . . .

CLIV. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damage shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted, and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*c*). Penalty on witnesses making default.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

CLVII. . . .

CLVIII. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith shall be quashed or vacated for want of Proceedings not to be quashed for want of form.

(*b*) The remainder of this section is repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. As to the appropriation of these penalties in boroughs having a separate court of quarter sessions, see the Municipal Corporation Act, 1882, 45 & 46 Vict. c. 50, s. 221.

(*c*) This section is repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply. 47 & 48 Vict. c. 43.

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form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions, on giving security.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions. . . .

Court to make such order as they think reasonable.

CLX. At the quarter sessions for which such notice will be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

* * * * *

SCHEDULES referred to by the foregoing Act.

SCHEDULE (C.) (*a*).

Form of Mortgage Deed.

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"The Company."
Mortgage, Number £

By virtue of [*here name the special Act*], we, "The Company," in consideration of the sum of Pounds paid to us by *A. B.* of do assign unto the said *A. B.*, his executors, administrators, and assigns, the said undertaking [and (*in such such loan shall be in anticipation of the capital authorized to be raised*) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title and interest of the company in the same, to hold unto the said *A. B.*, his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose*)], [at *or any place of payment other than the principal office of the company*]. Given under our common seal, this day of in the year of our Lord .

SCHEDULE (D.) (*a*).

Form of Bond.

"The Company."
Bond, Number £

By virtue of [*here name the special Act*], we, "The Company," in consideration of the sum of pounds to us in hand paid by *A. B.* of do bind ourselves and our successors unto the said *A. B.*, his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said *A. B.*, his executors, administrators, and assigns, [at (*in case any other place of payment than the principal office of the company be intended*),] on the day of which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this day of one thousand eight hundred and .

(*a*) See section 41, *ante*, p. 494.

SCHEDULE (E.) (*a*).

Form of Transfer of Mortgage or Bond.

Appndx. I, *A. B.*, of , in consideration of the sum of paid to me by *G. H.*, of , do hereby transfer to the said *G. H.*, his executors, administrators, and assigns, a certain bond [*or* mortgage] number made by "The Company," to bearing date the day of for securing the sum of and interest [*or, if such transfer be by endorsement*, the within security], and all my right, estate, and interest in and to the money thereby secured [*and if the transfer be of a mortgage*, and in and to the tolls, money, and property thereby assigned]. In witness whereof I have hereunto set my hand and seal, this day of one thousand eight hundred and .

(*a*) See section 46, *ante*, 494.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 VICT. CAP. 18) (*b*).

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature. [8th May, 1845.]

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WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

Act to apply to all undertakings authorized by Acts hereafter passed.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

Interpretations in this Act:

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature,

"Special Act:"

"prescribed:"

"the works"

(*b*) This Act is incorporated with the Public Health Act, 1875, s. 176, *ante*, p. 205. It is also incorporated with other Acts included in this Appendix, *e.g.*, the Public Baths and Wash-houses Act, 9 & 10 Vict. c. 74, s. 23, and by the Public Libraries Act, 1855, 18 & 19 Vict. c. 70, s. 19, the Labouring Classes Lodging Houses Act, 1851, 14 & 15 Vict. c. 34, s. 34, &c. It is amended by 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 187; 46 & 47 Vict. c. 15, *post*.

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"Promoters of the undertaking:"

which shall by the special Act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking (*a*).

Interpretations in this and the special Act:

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender: Words importing the masculine gender only shall include females.

"Lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure.

"Lease:" The word "lease" shall include an agreement for a lease:

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts" shall mean Her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require:

"Oath:" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County:" The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"the sheriff:" The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff" or the expression "the clerk of the peace,"

"the clerk of the peace:" shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"Justices:" The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such

"two justices:" matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

(*a*) As to the meaning of these expressions when read as incorporated with the Public Health Act, 1875, see section 316 of that Act, *ante*, p. 367.

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"Owner:"

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be entitled to sell and convey lands to the promoters of the undertaking:

"the bank."

The expression "the bank" shall mean the Bank of *England* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *England*, and shall mean the Bank of *Ireland* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *Ireland*.

Short title of the Act.

IV. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Form in which portions of this Act may be incorporated with other Acts.

V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act; be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Power to purchase lands by agreement.

VI. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and all estates and interests in such lands of what kind soever (*b*).

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed,

(*b*) See *Errington* v. *Metropolitan District Railway Company*, 19 Ch. D. 559.

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or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right (*a*) or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act, if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under disability to exercise other powers.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by a verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party (*b*), and if such two surveyors cannot agree in

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(*a*) The trustees of land for married women, who are absolutely entitled for their separate use, cannot contract to sell under this section. *Peters* v. *Lewes and East Grinstead Railway Company*, 18 Ch. D. 429.

(*b*) The surveyor must not be the party himself. *Peters* v. *Lewes, &c., Railway Company, supra.*

the valuation, they by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned (*c*).

Where vendor absolutely entitled, lands may be sold on chief rents.

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (*d*).

Payment of rents to be charged on tolls.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (*e*).

Power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to sell and re-purchase such lands.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

(*c*) See 23 & 24 Vict. c. 106, ss. 2—4, *post*.

(*d*) So much of this section as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, was repealed by 23 & 24 Vict. c. 106, s. 1: see also section 2 of that Act, *post*.

(*e*) See 23 & 24 Vict. c. 106, s. 2, *post*.

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Restraint on purchase from incapacitated persons.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes (*a*), purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal corporations not to sell without the approbation of the Treasury.

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland*, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows (*b*) :

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Notice of intention to take lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (*c*).

Service of notices on owners and occupiers of lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their

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(*a*) See *Hooper* v. *Bourne*, 3 Q. B. D. at p. 272. And see also the Public Health Act, 1875, *ante*, s. 175, p. 203.

(*b*) Sections 16 and 17 relate to the subscription of capital before these clauses are put in force. They are not set out here, as they cannot apply to local authorities.

See the Public Health Act, 1875, s. 176, *ante*, p. 205, as to the conditions upon which these clauses can be put into force.

(*c*) If notice to treat is served before applying to Parliament for power to take land, and the Act gives power to take more land than that described in the notice, such additional land may be taken, though it was not included in the notice. *In re The Corporation of Huddersfield* v. *Jacomb*, *ante*, p. 208.

last usual place of abode, if any such can after diligent inquiry be found, and, in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on a corporation aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat or in case of dispute, question to be settled as after mentioned.

XXI. If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation (*d*).

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected (*e*) by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration (*f*), and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly ; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award (*g*), or if no final

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(*d*) See sections 25—57, *post.*

(*e*) That is, if injuriously affected, whether taken or not. *Reg.* v. *Vestry of St. Lukes, Chelsea,* L. R. 7 Q. B. 148.

(*f*) That is, by arbitration under this Act, not under the Public Health Act, 1875. See *Ex parte Rayner,* 3 Q. B. D. 466.

(*g*) The umpire has a period of three months from the time when the arbitration devolves upon him. *Skerratt* v. *North Staffordshire Railway Company,*

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award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Appointment of arbitrator when questions are to be determined by arbitration.

XXV. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall have the same power and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

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2 Phill. 475; *In re Pullen and the Mayor of Liverpool,* 51 L. J. Q. B. 285. The court can extend the time for making the award even after the expiration of the *three* months. *Dare Valley Railway Company, In re,* L. R. 4 Ch. 554; *Rhodes* v. *Airedale Drainage Commissioners,* 1 C. P. D. 403; *Warburton* v. *Haslingdon Local Board, ante,* p. 213.

Appointment of umpire.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case* (*a*), shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of death of single arbitrator the matter to begin *de novo*.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte*.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (*b*).

Power of arbitrators to call for books, &c.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator or umpire to make a declaration.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence

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(*a*) These words are repealed by 46 Vict. c. 15.

(*b*) The umpire's duty devolves upon him at the expiration of the time named, and the time within which he must make his award runs from that date, whether or not he has received notice of the failure of the arbitrators to make their award. *Skerrat* v. *North Staffordshire Railway Company*, *ante*, p. 511.

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of a justice (*a*) make and subscribe the following declaration; (that is to say),

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act*].

"*A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

Costs of arbitration how to be borne.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*b*).

Award to be delivered to the promoters of the undertaking.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission may be made a rule of court.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties (*c*).

Award not void through error in form.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form (*d*).

Promoters of the undertaking to give notice before summoning a jury.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money

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(*a*) That is, *any* justice, not merely one having jurisdiction where the lands are situated. *Davies* v. *South Staffordshire Railway Company*, 21 L. J. M. C. 52.

(*b*) The right to costs depends upon the section, and not upon the provisions of the Public Health Act. *Ex parte Rayner*, *ante*, p. 511.

(*c*) This does not enable an award to be enforced by motion. *Newbold* v. *Metropolitan Railway Company*, 14 C. B. (N.S.) 405; *Re Walker and Beckenham Local Board*, 48 J. P. 264.

(*d*) But it may be set aside if it include compensation in respect of a claim not legally enforceable. *Beckett* v. *Midland Railway Company*, L. R. 1 C. P. 241; *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 3. Ex. 320.

they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works (*e*).

Warrant for summoning jury to be addressed to the sheriff.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose (*f*), and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested (*g*) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner.

XL. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors' book and special jurors' list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

XLI. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him (*h*).

Jury to be impannelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries

(*e*) An irregularity in complying with this section may be waived. See *Emmanuel Hospital* v. *Metropolitan District Railway Company*, L. T. (N.S.) 692.

(*f*) Separate juries cannot be summoned in respect of each different property of the same owner included in the notice to treat. *Ecclesiastical Commissioners* v. *Commissioners of Sewers*, 14 Ch. D. 305.

(*g*) As to the interest of the sheriff see *Reg.* v. *Manchester, Sheffield, and Lincoln Railway Company*, L. R. 2 Q. B. 336.

(*h*) The sheriff must summon a fresh jury if the first in question has been quashed. *Horrocks* v. *Metropolitan Railway Company*, 19 C. B. (N.S.) 139.

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for trials of issue joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid ; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside, witnesses to be summoned.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law ; and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

Penalty on sheriff and jury for default.

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts ; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts.

Penalty on witnesses making default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

Jury to be sworn.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they

shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence. Appndx.

Sums to be paid for purchase of lands and for damage, to be assessed separately.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (*a*).

Verdict and judgment to be recorded.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies (*b*).

Costs of the inquiry how to be borne.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered (*c*) by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party

(*a*) These provisions are directory only. *Re Bradshaw's Arbitration*, 4 Q. B. 562.

(*b*) Interest is payable not from date of verdict, but from the time when the promoters might prudently have taken possession, *i. e.*, in a case where the title has not been accepted before verdict, when a good title is shown. *In Re Pigott* v. *Great Western Railway Company*, 18 Ch. D. 146, disapproving *Re Eccleshill Local Board*, 13 Ch. D. 365.

(*c*) This applies only to an offer made under section 38, *Reg* v. *Smith*, 12 Q. B. D. 481.

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shall bear his own costs, other than as aforesaid, incident to such inquiry (*a*).

Particulars of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of *England* or *Ireland*, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry (*b*).

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interests therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provisions hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury,

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(*a*) The claimant is not entitled to any costs if an award is made in his favour in respect of a claim for which he has no right to compensation. *Todd* v. *Metropolitan District Railway Company*, 19 W. R. 720. As to the offer of compensation see section 38, *ante*, p. 514. As to costs of an abortive inquiry see *Reg.* v. *North London Railway Company*, 51 L. J. Q. B. 241. The conveyance by the owner is not a condition precedent to the payment of costs due to him. *Capell* v. *Great Western Railway Company*, 11 Q. B. D. 345.

(*b*) The decision of the master cannot be reviewed. *Sandback Charity* v. *North Staffordshire Railway Company*, 3 Q. B. D. 1.

and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts (*c*).

Deficiency of special jurymen.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LVIII. The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Two justices to nominate a surveyor.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

(*c*) The special jury must be summoned if notice is given within the twenty-one days limited by section 68 without any further extension of time. *Glyn* v. *Aberdare Railway Company*, 6 C. B. (N.S.) 359.

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Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say),

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

"*A. B.*

"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Valuation, &c., to be produced to the owner of the lands on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase money and compensation, how to be estimated.

LXIII. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (*a*).

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have appled to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

(*a*) Compensation under this section may be awarded in one sum. *In re Bradshaw's Arbitration*, 12 Q. B. 563.

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If further sum awarded, promoters to pay or deposit same within fourteen days.

LXVI. If the arbitrators award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

Costs of the arbitration.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected (*b*) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

(*b*) The damage awarded under this section must be damage in respect of which an action would have lain but for the statutory powers justifying it, and must arise from the execution of the works, not from the use of them when executed. *Ricket* v. *Metropolitan Railway Company*, L. R. 2 H. L. 175; *Hammersmith Railway Company* v. *Brand*, L. R. 4 H. L. 171; *Reg.* v. *Metropolitan Board of Works*, L. R. 4 Q. B. 358; *Metropolitan Board of Works* v. *M'Carthy*, L. R. 7 H. L. 243; *Buccleuch, Duke of*, v. *Metropolitan Board of Works*, L. R. 5 H. L. 418; *Caledonian Railway Company* v. *Walker's Trustees*, 7 App. Cas. 259. For the numerous cases decided upon this section reference should be made to *Lloyd on Compensation* and *Jepson's Lands Clauses Act.*

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And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

LXIX. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committe of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant-General of the Court of Chancery in *England* if the same relate to lands in *England* or *Wales*, or the Accountant-General of the Court of Exchequer in *Ireland* if the same relate to lands in *Ireland*, to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say),

Application of moneys deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three *per Centum* Consolidated or Three *per Centum* Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

LXXI. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or

exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not exceeding 20*l.* to be paid to parties.

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity, of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

LXXIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, on the petition of any party interested in such money, to

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order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

LXXV. Upon deposit in the bank in manner herein-before provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as

the promoters of the undertaking can do), subject to the control and disposition of the said court (*a*). Appndx.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, of any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of moneys so deposited.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in *England* or the Court of Exchequer in *Ireland*, may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

LXXIX. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

LXXX. In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith,

(*a*) Land cannot be acquired under this and the next section unless the owner be found. *Wells* v. *Chelmsford Local Board*, 15 Ch. D. 108.

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except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland* to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in *England* or the Court of Exchequer in *Ireland* that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

And with respect to the conveyances of lands, be it enacted as follows:

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out

and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery or by a master in Chancery in *Ireland*, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation (*a*).

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties

(*a*) The promoters cannot tax these costs after payment. *Ex parte Somerville*, 23 Ch. D. 167.

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who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds *per centum per annum,* from the time of entering on such lands, until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act (*a*).

Upon deposit being made cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be

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(*a*) As to entry under this section when the time for the execution of the works was about to expire, see *Loosemore* v. *Tiverton, &c., Railway Company*, 22 Ch. D. 25. As to entry on land when the promoters were entitled to acquire only an easement of tunnelling, see *Hill* v. *Midland Railway Company*, 21 Ch. D. 143.

repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited. Appndx.

The company may pay the deposit money into the bank by way of security during the time that the office of the Accountant-General is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governors and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the bank of *England* the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (*b*) enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices (*c*); and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reason-

(*b*) This does not include an entry under a mistaken belief of right. *Steele* v. *Midland Railway Company*, 21 L. T. (N.S.) 387.

(*c*) See section 136, *post*.

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ably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters.

XC. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provisions hereinbefore contained shall not be held conclusive as to the right of entry on any such land by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

XCI. If in any case in which according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly (*a*).

Parties not to be required to sell part of a house.

XCII. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof (*b*).

And with respect to small portions of intersected land, be it enacted as follows:

Owners of intersected lands may insist on sale.

XCIII. If any lands not being situate in a town (*c*) or built upon shall be so cut through and divided by the works as to leave, either on both sides or one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters

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(*a*) The aid of the sheriff is not necessary unless the entry is actually resisted. *Loosemore* v. *Tiverton, &c., Railway Company*, 22 Ch. D. 25.

(*b*) House includes curtilage and garden. *Grosvenor* v. *Hampstead Junction Railway Company*, 26 L. J. Ch. 731; *Governors of St. Thomas's Hospital* v. *Charing Cross Railway Company*, 30 L. J. Ch. 395. As to what is a manufactory, see *Richards* v. *Swansea Improvement and Tramways Company*, 9 Ch. D. 425.

(*c*) See *London and South Western Railway* v. *Blackmore*, L. R. 4 H. L. 610; *Carington* v. *Wycombe Railway Company*, L. R. 3 Ch. 377.

of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner. Appndx.

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands (*d*) have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

And with respect to copyhold lands, be it enacted as follows:

Conveyance of copyhold lands to be enrolled.

XCV. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels

(*d*) Whether situate in a town or elsewhere. *Eastern Counties Railway* v. *Marriage*, 31 L. J. Ex. 73.

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shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

And with respect to any such lands, being common or waste lands, be it enacted as follows (*a*):

(*a*) This part of the Act has been amended in some important particulars by the Commonable Rights Act, 1882, 45 Vict. c. 15, *post*.

Compensation for common lands, where held of a manor, &c., how to be paid.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for common lands where not held of a manor how to be ascertained.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not

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more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

Meeting to appoint a committee.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

Disputes to be settled as in other cases.

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners the land to vest.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, by an order to be made upon petition, to order

payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested as it shall think fit. Appndx.

And with respect to lands subject to mortgage, be it enacted as follows (*a*):

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Deposit of mortgage money on refusal to accept.

CIX. If, in either of the cases aforesaid upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in

(*a*) As to equitable mortgagees and their rights, see *Martin* v. *London, Chatham and Dover Railway Company*, L. R. 1 Ch. 501.

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such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such land, and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking

to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed. Appndx.

Deposit of money when refused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this Act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-

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investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Release of lands from rent-charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of lands from charge.

CXVI. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and

remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

And with respect to lands subject to leases, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

CXIX. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works (*a*).

(*a*) An interest created by an owner after notice to treat is not a subject for compensation: *Re Marylebone Improvement Act*, L. R. 12 Eq. 389; *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78.

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Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices (*a*), in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater interest claimed than from year to year, lease to be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of time for compulsory purchase.

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act (*b*).

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof

CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or

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(*a*) That is, if the land be taken (*Reg.* v. *Manchester, Sheffield and Lincolnshire Railway Company*, 4 E. & B. 88); but if the lands are injuriously affected the proceedings are under 68, *ante*, p. 514; *Reg.* v. *Sheriff of Middlesex*, 31 L. J. Q. B. 261; and see *Reg.* v. *Stone*, L. R. 1 Q. B. 529. The complaint need not be made within six months under 11 & 12 Vict. c. 43, s. 11 (*Reg.* v. *Hannay*, 44 L. J. M. C. 27). Compensation for the residue of a lease which will expire in less than a year must be determined by justices under this section, and not by arbitration (*Reg.* v. *Great Northern Railway*, 2 Q. B. D. 151).

(*b*) It is sufficient if notice to treat is given within the three years. See *Salisbury* v. *Great Northern Railway Company*, 17 Q. B. 840.

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omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interests may be recoverable in law or equity ; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

may have been omitted by mistake.

How value of such lands to be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXVI. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place ; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows : (*c*)

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(*c*) Section 127 is not incorporated with the Public Health Act, 1875. See section 176 of that Act, *ante*, p. 205. As to what are superfluous lands, see *Betts* v. *Great Eastern Railway Company*, 49 L. J. Ex. 197; *Metropolitan District Railway Company and Cosh, In re*, 13 Ch. D. 607; *Hooper* v. *Bourne*, 5 App. Cas. 1; *London and South-Western Railway Company* v. *Gomm*, 20 Ch. D. 562; *Hobbs* v. *Midland Railway Company*, 20 Ch. D. 418.

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Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks.

CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received (*a*).

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act the word "grant" shall operate as express covenants by the promoters of the undertaking, for

(*a*) The promoters may insert restrictive covenants in the conveyance. *In re Higgins and Hitchman*, 21 Ch. D. 95.

themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say),

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrance done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors, from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenant, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and poor's rate to be made good.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax (*b*).

(*b*) But the promoters are not liable to be rated. *Mayor of London* v. *St. Andrew's, Holborn*, L. R. 2 C. P. 574. As to this section, see *East London Railway Company* v. *Whitchurch*, L. R. 7 H. L. 81; *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76.

Appndx.

Service of notices upon company.

CXXXIV. And be it enacted, that any summons or notice (*a*), or any writ or other proceedings at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Tender of amends.

CXXXV. And be it enacted, that if any party shall have committed an irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows (*b*):

Penalties to be summarily recovered before two justices.

CXXXVI. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

CXXXVII. . . .

Distress, how to be levied.

CXXXVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in

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(*a*) For any purpose, and not only in an action. *In re South Yorkshire, &c., Railway Company*, 18 L. J. Q. B. 333. But see, as to service of notices on local authorities, the Public Health Act, 1875, sections 266, 267, *ante*, p. 314.

(*b*) This part of the Act is printed as it is left unrepealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, which substitutes for the repealed sections the corresponding provisions of the Summary Jurisdiction Acts.

which the offence shall have been committed, to be applied in aid of the poor's rate of such parish. . . . (*c*). Appndx.

Distress against the treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

CXLI. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

CXLII. . . .

Penalty on witnesses making default.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*d*).

CXLIV. . . .

Proceedings not to be quashed for want of form.

CXLV. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts (*e*).

(*c*) The remainder of this section was repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(*d*) This section is repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply, 47 & 48 Vict. c. 43.

(*e*) See the notes to the corresponding section of the Public Health Act,

Appndx.

Parties allowed to appeal to quarter sessions on giving security.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions. . . .

Court to make such order as they think reasonable.

CXLVII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis;* and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or

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1875, as to *certiorari*, s. 262, *ante*, p. 302. This section does not apply in cases where acts are done without jurisdiction. See *South Wales Railway Company* v. *Richards*, 13 L. J. Q. B. 310; *R.* v. *Edmundson*, 17 Q. B. 67; *Reg.* v. *London and North-Western Railway Company*, 12 W. R. 208. As to the time within which a *certiorari* will be granted, see *Reg.* v. *Stewart*, 5 Q. B. D. 179. As to setting aside a verdict on the ground that the jury were treated to a champagne luncheon, see *Tanner* v. *Swindon, &c., Railway Company*, 45 L. T. (N.S.) 209.

any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury (*a*). Appndx.

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SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I, of in consideration of the sum of paid to me [*or, as the case may be* into the Bank of England] [*or* Bank of Ireland] in the name and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "the promoters of the undertaking" [*naming them*], [*or* to *A. B.* of and *C. D.* of two trusteee appointed to receive the same], pursuant to the [*here name the special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

(*a*) The remaining sections of the Act relating to access to the special Act are not incorporated with the Public Health Act, 1875. See section 176, *ante*, p. 205.

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

Appndx. I, of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or* half-yearly, *as agreed upon*] portions, henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

THE RAILWAY CLAUSES CONSOLIDATION ACT, 1845.

(8 Vict. Cap. 20) (*a*).

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the making of Railways. [8th May, 1845.]

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And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows (*b*): **Appndx.**

Provision for damages not otherwise provided for.

CXL. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly (*c*).

Distress against the treasurer.

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

(*a*) The following sections of this Act are here set out as being incorporated with the Gasworks Clauses Act, 1847, 10 Vict. c. 15, s. 40, and the Waterworks Clauses Act, 10 Vict. c. 17, s. 85, *post*.

(*b*) This part of the Act is printed as it is left unrepealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, which substitutes for the repealed sections the corresponding provisions of the Summary Jurisdiction Acts.

(*c*) These damages, costs, and expenses are now apparently civil debts within the Summary Jurisdiction Act, 1879, sections 6, 35.

Appndx.

Method of proceeding before justices in questions of damages, &c.

CXLII. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

CXLV. Every penalty or forfeiture imposed by this or the special Act or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . . .

CXLVI. . . . .

CXLVII. . . . .

Distress how to be levied.

CXLVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

CXLIX. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. Distress not unlawful for want of form.

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district. Application of penalties.

CLI. . . . .

CLII. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (*a*). Penalty on witnesses making default.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person Transient offenders.

(*a*) This section is repealed so far as relates to any matter to which the Summary Jurisdiction Acts apply: 47 & 48 Vict. c. 43.

Appndx.

who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

CLV. . . . .

Proceedings not to be quashed for want of form, &c.

CLVI. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions.

Court to make such order as they think reasonable.

CLVIII. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

CLIX. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis;* and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any

2 & 3 Vict. c. 71.

order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act. Appndx.

Persons giving false evidence liable to penalties of perjury.

CLX. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

THE BATHS AND WASH-HOUSES ACT, 1846.

(9 & 10 Vict. Cap. 74) (*a*).

An Act to encourage the Establishment of Public Baths and Wash-houses.
[26th August, 1846.]

Appndx.

WHEREAS it is desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts to encourage the establishment therein of public baths and wash-houses and open bathing places: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act may be adopted for any incorporated borough in *England* which is regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of one of Her Majesty's principal Secretaries of State (*b*) for any parish in *England* not within any such incorporated borough (*c*).

Act may be adopted in certain boroughs and parishes.

Interpretation of Act.

II. And be it enacted, that in this Act the following words and expressions shall have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction; that is to say,

"Parish" shall mean . . . (*d*):

"Borough" shall mean city, borough, port, cinque port, or town corporate:

"Ratepayers" . . . (*e*):

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of poor of the parish, and acting instead of overseers of the poor:

(*a*) As to the adoption of this Act and the exercise of the powers conferred by it upon urban authorities, see the Public Health Act, 1875, s. 10, *ante*, p. 27. This Act is amended by 10 & 11 Vict. c. 61; 41 & 42 Vict. c. 14; and 45 & 46 Vict. c. 30, all of which are set out *post*.

(*b*) Now the Local Government Board; see 34 & 35 Vict. c. 70, *post*.

(*c*) But see now the Public Health Act, 1875, s. 10, *ante*, p. 27, which gives the urban authority power to adopt and act under the statute to the exclusion of any other authority.

(*d*) The definition of parish was repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. The word parish now includes a place for which a separate poor rate is or can be made, or a separate overseer is or can be appointed: 29 & 30 Vict. c. 113, s. 18. See also 10 & 11 Vict. c. 61, s. 2, *post*.

(*e*) This definition was also repealed by the Statute Law Revision Act, 1875. It is replaced by 10 & 11 Vict. c. 61, *post*.

Appndx.

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry . . . (*f*) elected under an Act passed in the second year of the reign of His late Majesty, intituled *An Act for the better regulations of vestries and for the appointment of auditors of accounts, in certain parishes of England and Wales*, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry:

1 & 2 Will. 4 c. 60.

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners:

"Clerk" shall mean, as regards an incorporated borough the town clerk of such borough; and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners:

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, or place where the matter requiring the cognizance of justices shall arise:

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural (*g*).

* * * * *

Expenses of carrying this Act into execution shall be charged upon the borough fund, and income arising carried to same.

IV. . . . . The income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of this Act, to be called "The Public Baths and Wash-houses Account."

On the requisition of ten ratepayers, churchwardens, &c., to convene vestry meeting to determine whether this Act shall be adopted.

V. And be it enacted (*h*), that upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries

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(*f*) The Statute Law Revision Act, 1875, repealed the part of this clause which, as originally enacted, contained a reference to 59 Geo. 3, c. 12. See also the amendment of the definition in 10 & 11 Vict. c. 61, s. 2, *post*.

(*g*) Section 3 is repealed by the Statute Law Revision Act, 1875: as also is the whole of section 4 except the part set out in the text.

(*h*) These provisions are not affected with respect to parishes in a rural sanitary district.

Appndx.

of State (*a*) for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish : Provided always, that no such resolution of the vestry shall be deemed to be carried unless at least two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.

If vestry resolve to adopt the Act, a copy of resolution to be sent to Secretary of State, &c.

No resolution deemed to be carried unless two-thirds vote for it.

VI. And be it enacted, that in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate re-appointment.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

VII. And be it enacted, that any commissioner may at any time resign his office as a commissioner on giving seven days notice in writing of his intention to resign to the clerk, and also to the churchwardens.

Resignation of commissioners.

VIII. And be it enacted, that any vacancies in the commissionership may be filled up by the vestry when and as the vestry shall think fit.

Vacancies to be filled up by vestry.

IX. And be it enacted, that the commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

Meetings of the commissioners.

X. And be it enacted, that the commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

Special meetings of commissioners.

XI. And be it enacted, that at all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Quorum of meetings of commissioners.

XII. And be it enacted, that the commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Commissioners may appoint and remove officers, &c.

(*a*) See note (*b*), *ante*, p. 554.

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Minutes of proceedings of commissioners to be entered in a book.

XIII. And be it enacted, that all orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commissioners to keep accounts, which shall be open to inspection.

Penalty for refusing to allow inspection.

XIV. And be it enacted, that the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Auditors to be appointed yearly who shall examine the accounts and report to vestries.

XV. And be it enacted, that the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of *March* in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry (*b*).

Expenses of executing Act in any parish to be paid out of the poor's rate.

XVI. And be it enacted, that the expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish (*c*).

Overseers to levy, as part of the poor's rate, such sums as vestry shall deem necessary to pay expenses.

XVII. And be it enacted, that for defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and

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(*b*) These auditors are superseded in local board districts by the Public Health Act, 1875, s. 245, *ante*, p. 281.

(*c*) Out of the general district rate, when the urban authority are the commissioners. See the Public Health Act, 1875, s. 207, *ante*, p. 233.

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shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts.

Moneys raised, and the income arising from baths, &c., in the parish to be applied towards defraying expenses.

XVIII. And be it enacted, that the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish (*a*).

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

XIX. And be it enacted, that the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner not inconsistent with the provisions of this Act, and for such time as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State (*b*), be agreed on between such vestries that any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

XX. And for the more easy execution of the purposes of this Act, be it enacted, that the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for Public Baths and Wash-

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(*a*) To the district fund account in the case mentioned in the last note.
(*b*) See note (*b*), *ante*, p. 554.

houses in the Parish of ( ) in the County of ( )," and by that name may sue and be sued in all courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act. Appndx.

Councils, &c., may borrow money for the purposes of the Act with the approval of the Treasury.

XXI. And be it enacted, that for carrying this Act into execution in any borough or parish respectively, the council, with the approval of the Commissioners of Her Majesty's Treasury (*c*), and the commissioners, with the sanction of the vestry, and also with the approval of the Commissioners of Her Majesty's Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish (*d*), the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

The public works loan commissioners may advance money for the purposes of this Act.

XXII. And be it enacted, that the commissioners for carrying into execution an Act passed in the second session of the fifth year of the reign of Her Majesty, intituled *An Act to authorize the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor, and to amend the Acts authorizing the issue of exchequer bills for the like purposes*, may from time to time make to the . . . commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of . . the rates for the relief of the poor of the parish . . (*e*)

8 & 9 Vict. c. 16, incorporated with this Act for certain purposes.

XXIII. And be it enacted, that the provisions of the Companies Clauses Consolidation Act, 1845 (*f*), with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the commissioners; and so much of such provisions as are applicable to the "secretary of the company" shall apply to the

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(*c*) The Local Government Board is now substituted for the commissioners of the Treasury by the Public Health Act, 1875, s. 234, *ante*, p. 271; and see 41 Vict. c. 14, s. 9, *post*.

(*d*) See further the Public Health Act, 1875, s. 233, *ante*, p. 270.

(*e*) References in the section to the council of the borough and the borough fund were repealed by the Statute Law Revision Act, 1875.

(*f*) See these provisions, *ante*.

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clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privilege of shareholders.

Council may appropriate, with consent of the Treasury, lands vested in the mayor, &c.

Commissioners may, with approval of vestry, &c., appropriate lands belonging to parish; or contract for purchase of the same.

XXIV. And be it enacted, that in any such borough the council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Commissioners for *England* and *Wales* (*a*), may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish (*b*).

Councils and commissioners may erect, &c., public baths and wash-houses and open bathing places.

XXV. And be it enacted, that the council and commissioners respectively may from time to time, on any lands so appropriated, purchased or rented, or contracted so to be respectively, erect any buildings suitable for public baths and wash-houses, and as to such wash-houses, either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may enter into contracts for the purposes of this Act.

XXVI. And be it enacted, that the council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always that no contract above the value or sum of one hundred pounds shall be entered

No contract above 100*l.* to be entered into without notice.

(*a*) Now the Local Government Board. See 34 & 35 Vict. c. 70, *post*.

(*b*) The power conferred by this section to purchase or rent lands is extended to lands in the immediate neighbourhood of the borough or parish by 45 & 46 Vict. c. 30, s. 3, *post*. In urban districts these powers must be exercised by the urban sanitary authority. See the Public Health Act, 1875, s. 10, *ante*, p. 27.

into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

Council or commissioners may purchase existing baths, &c.

XXVII. And be it enacted, that the council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish (*c*), and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish (*c*) by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish (*d*).

Power to water and gas companies to supply water and gas to baths &c.

XXVIII. And be it enacted, that any commissioners of waterworks, trustees of waterworks, water companies, canal companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gas works respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open bathing places either without charge or on such other favourable terms as they shall think fit (*e*).

(*c*) Or in the immediate neighbourhood of such borough or parish; 45 & 46 Vict. c. 30, s. 2.

(*d*) In an Irish case decided upon 9 & 10 Vict. c. 87, s. 27, which is similar to this clause in the text, it was held by the Lord Chancellor of Ireland, confirming a decision of the M.R., that where a town council contracted to purchase baths and wash-houses commenced by a private society on lands held under a sub-lease, being portion of lands comprised in a demise from the owner in fee, so that they were subject to a rent above that in the sub-lease as well as to the covenants and conditions in the original lease, they were not compellable to complete their contract, as it would have been a breach of trust on their part to purchase lands the interest in which might be lost by the default of others. *Mulholland* v. *Belfast Corporation*, 9 Ir. Ch. R. 204, 292.

(*e*) See the Public Health Act, 1875, section 65, *ante*, p. 75.

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Councillors and commissioners not to be personally liable.

XXIX. And be it enacted, that nothing in this Act contained shall render any member of the council of any borough, or any commissioner, personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

XXX. And be it enacted, that every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty (*a*).

Council, &c., empowered to make sale and exchange of lands, with consent.

XXXI. And be it enacted, that the council, with the approval of the Commissioners of Her Majesty's Treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the Commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

When baths, &c., are considered too expensive they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

XXXII. And be it enacted, that whenever any public baths or wash-houses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the Commissioners of Her Majesty's Treasury may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish (*b*).

Management to be vested in councils and parish commissioners.

XXXIII. And be it enacted, that the general management, regulation, and control of the public baths and wash-houses and open bathing places established under this Act shall, subject to the provisions of this

(*a*) See section 23, *ante*, p. 559.

(*b*) To the district fund account in the case where the authority has been transferred to the local board under 21 & 22 Vict. c. 98, s. 47, or the Public Health Act, 1875, section 10, *ante*, p. 22.

Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners (*c*). Appndx.

XXXIV. And be it enacted, that the bye-laws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce shall include such bye-laws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any bye-law made by them respectively; and such bye-laws shall make sufficient provision for the several purposes respectively (*d*) expressed in the Schedule (A.) to this Act: Provided always, that no bye-law made under the authority of this Act shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State (*e*). Council, &c., may make bye-laws for regulating the use of baths and wash-houses, &c., and charges thereat. Bye-laws to be approved by the Secretary of State.

XXXV. And be it enacted, that a printed copy or sufficient abstract of the bye-laws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the bye-laws relating to the use of the wash-houses shall be put up in some convenient place near every washing-tub or trough, or every pair of washing-tubs or troughs, in every wash-house. Copies or extracts of bye-laws to be hung up in every bath room, &c.

XXXVI. And be it enacted, that the number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher class if more than one, in the same building or buildings (*f*). Proportion of baths for the labouring classes.

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XXXVIII. And be it enacted, that for the recovery of the charges at such wash-houses the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person. As to recovery of charges at wash-houses.

XXXIX. And be it enacted, that if any clerk or other officer, or any servant who shall be in anywise employed by any council or com- Penalty for council, commissioners, or

(*c*) But see now the Public Health Act, 1875, section 10, *ante*, p. 22.

(*d*) *Sic* in statute.

(*e*) Now the Local Government Board; 34 & 35 Vict. c. 70, *post*. Model bye-laws have been issued by the Local Government Board under this section.

(*f*) Section 37 was repealed by the Statute Law Revision Act, 1875, as also was Schedule (B.) to this Act, as to which see 10 & 11 Vict. c. 61, s. 6, *post*.

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officers taking fees beyond salaries, or being interested in contracts.

missioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne, or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of anything done or forborne, or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds (*a*).

Application of penalties.

XL. And be it enacted, that such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof.

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SCHEDULE referred to by the foregoing Act.

Schedule (A.)

Bye-laws to be made in all cases.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

(*a*) See the Public Health Act, 1875, section 193, *ante*, p. 224, as to officers, and Schedule II. s. 64, *ante*, p. 411, as to the commissioners.

THE MARKETS AND FAIRS CLAUSES ACT, 1847.

(10 Vict. Cap. 14) (*b*).

An Act for consolidating in One Act certain Provisions usually contained in Acts for constructing or regulating Markets and Fairs.

[23rd April, 1847.]

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WHEREAS it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorizing the construction or regulation of markets and fairs, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such markets or fairs as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act, which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act. Extent of Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows: Interpretations in this Act:

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the "special Act:" "prescribed:" "the Lands:"

(*b*) This Act is incorporated with 38 & 39 Vict. c. 55, by section 167, *ante*, p. 194. The 34 & 35 Vict. c. 12, enacts that the Secretary of State, on the representation of the magistrates in petty sessions, or the owner of any *fair* may, with the consent of the owner of such *fair*, or the tolls payable in respect thereof, order any *fair* to be abolished. His order is to be published in the *London Gazette* and some local newspaper, and then the fair is to be abolished. By 36 & 37 Vict. c. 37, s. 6, which repealed 31 & 32 Vict. c. 51, he may order the day of holding the fair to be altered. Reference should be made to the Contagious Diseases (Animals) Act, 1878, 41 & 42 Vict. c. 74, and to the orders made under it, as affecting markets and fairs.

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lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair (*a*), and the works connected therewith, by the special Act authorized to be constructed or regulated; and the expression "the undertakers" shall mean the persons authorized by the special Act to construct or regulate the market or fair.

"the undertaking:"

"Undertakers:"

Interpretations in this and the special Act.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,) (*b*)

Number: Words importing the singular number shall include the plural number, and words importing the plural number shall include also the singular number:

Gender: Words importing the masculine gender shall include females:

"Person:" The word "person" shall include a corporation, whether aggregate or sole:

"Lands:" The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure:

"Lease:" The word "lease" shall include a missive of and an agreement for a lease:

"the market or fair:" The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorized to be constructed or regulated:

"Cart:" The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods:

"Driver:" The word "driver" shall include the carter or other person having the care of any cart:

"Cattle:" The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine:

"Collector:" The expression "the collector" shall mean the person appointed by the undertakers to collect the stallages, rents, or tolls authorized by the special Act, and shall include the assistants of the collector:

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts," when the matter submitted to the cognizance of the court arises in *England* or *Ireland*, shall mean Her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster*, and the Court of Pleas of the County of *Durham;* and when such matter arises in *Scotland* it shall mean the Court of Session:

"Oath:" The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County:" The word "county" shall include riding or other division of a county

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(*a*) The Public Health Act, 1875, s. 167, *ante*, p. 194, does not extend to a *fair*.

(*b*) See the Public Health Act, 1875, s. 316, as to the interpretation of terms in incorporated statutes. Sections 1—5 of this Act are not incorporated, but reference to them may be necessary to explain the terms used in later incorporated sections. They are, therefore, included here.

having a separate commission of the peace; and in *Scotland*, stewartry, and any ward or other division of a county or stewartry, having a separate sheriff; and it shall also include county of a city or county of a town:

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands situated not wholly in any one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices assembled and acting together:

"Two justices:"

"Sheriff:" The word "sheriff" shall mean the sheriff depute of the county or ward of a county in *Scotland* and the steward depute of the stewartry in *Scotland* in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof for the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act. IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts. V. For the purposes of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

And with respect to the holding of the market or fair, and the protection thereof, be it enacted as follows (*c*):

Before the market or fair shall be opened notice to be XII. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days notice of the time when

(*c*) These clauses are incorporated by the Public Health Act, 1875, s. 167, *ante*, p. 194.

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given by undertakers.

the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Sales elsewhere than in markets prohibited under a penalty not exceeding 40*s.*

XIII. After the market place is opened for public use every person other than a licensed hawker (*a*) who shall sell or expose for sale in any place within the prescribed limits (*b*) except in his own dwelling place or shop (*c*), any articles in respect of which tolls are by the special Act

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(*a*) A licensed pedlar who sold potatoes and fruit outside the market, but within the limits, was held to be protected by the provision, though he had a horse and waggon, and was thus acting rather as a hawker than as a pedlar. *Howard* v. *Lupton*, L. R. 10 Q. B. 598; 44 L. J. M. C. 150; 40 J. P. 7.

(*b*) As to *the prescribed limits*, see 38 & 39 Vict. c. 55, s. 316, *ante*, p. 367. In *Caswell* v. *Cook*, *supra*, the term was held to mean the limits to which the local Act applied, in that case to the boundaries of the borough. A farmer residing at B., ten miles from T., a district under the Public Health Act, contracted at B. with a butcher living in T. to sell some pigs to him, which were to be killed at B. and delivered at T. It was held that no offence was committed within this section: *Bourne* v. *Lowndes*, 22 J. P. 354. A sale is not within the section unless the bulk of the goods sold is, at the time of such sale, substantially within the prescribed limits: *Newtonards Town Commissioners* v. *Woods*, Ir. L. R. Com. L. 506. But a sale by sample, the bulk being within the limits, is within the section: *Londonderry, Mayor of* v. *McElhinney*, 9 Ir. R. C. L. 61. As to a sale in a part of a town not in existence at the time of the passing of a local Act, see *Collier* v. *North*, 35 L. T. (N.S.) 345; 40 J. P. 342. H. delivered certain carcases at a door within the limits, and the carcases were then weighed and paid for, but it was alleged that they were delivered in pursuance of a previous contract entered into between the same parties at the same place a week previously. It was held that the sale was within the section: *Exeter, Mayor of* v. *Heaman*, 37 L. T. (N.S.) 534; 42 J. P. 503. And where a greengrocer within the limits used to order vegetables from B., a farmer outside, and paid for them monthly, it was held that B. was liable to be convicted of selling in a place within the limits other than his own shop: *Torquay Market Company* v. *Berridge*, 48 J. P. 71. These cases may be distinguished from *Bourne* v. *Lowndes*, *supra*, on the ground that there the sale was made beyond the limits; but they cannot be reconciled with *Stretch* v. *White*, 25 J. P. 485, where a farmer living without the limits was held not to offend by sending all his butter from time to time to a shop within the limits, and being allowed the market price for it.

(*c*) A vessel moored to a wharf on a canal within the limits is not a shop: *Wiltshire* v. *Baker*, 11 C. B. (N.S.) 237; 31 L. J. C. P. 10; 10 W. R. 89; 5 L. T. (N.S.) 355. In order to be within the exemption, the shop need not be attached to a dwelling-house; but a sale by auction in a shop attached to and being part of a dwelling-house is privileged: *Wiltshire* v. *Willett*, 11 C. B. (N.S.) 240; 31 L. J. C. P. 10; 10 W. R. 44; 5 L. T. (N.S.) 355; 26 J. P. 312. A structure which resembled a booth or stall, having no stable or substantial character, no room for customers within it, nor means of sheltering or protecting goods from the weather or from depredators, was held not to be a shop: *Pope* v. *Whalley*, 6 B. & S. 303; 11 Jur. (N.S.) 444; 34 L. J. M. C. 76; 13 W. R. 402; 11 L. T. (N.S.) 769; 29 J. P. 134. A sale by auction of horses in a yard attached to a dwelling-house is not a sale in a shop: *Llandaff and Canton Market Company* v. *Lyndon*, *supra*. A piece of ground outside a dwelling-house which had been used for many years as the site of a wooden shed, in which articles had been sold, was held to be an accessory to the shop, and within this exception: *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316; 38

authorized to be taken in the market (*d*), shall for every such offence be liable to a penalty not exceeding forty shillings. **Appndx.**

XIV. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act (*e*). Market days.

L. J. M. C. 91; 20 L. T. (N.S.) 439; 17 W. R. 668; 10 B. & S. 309; 33 J. P. 565. An agricultural hall with land containing pens and sheds for the sale of cattle and sheep by auction, though adjoining the auctioneer's dwelling-place, was held not to be a shop: *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690; 41 L. J. M. C. 170; 27 L. T. (N.S.) 33; 36 J. P. 804; *McHole* v. *Davies*, 1 Q. B. D. 59; 45 L. J. M. C. 30; 33 L. T. (N.S.) 502; 24 W. R. 343; 40 J. P. 548. A sale in a skittle ground let for two days for the occasion was held not to be a sale in a shop: *Hooper* v. *Kenshole*, 2 Q. B. D. 127; 46 L. J. M. C. 160; 36 L. T. (N.S.) 111; 25 W. R. 368; 41 J. P. 182; and see also *Perkins* v. *Arber*, 37 J. P. 406.

There may be a right by custom to exclude persons from selling marketable articles in shops on market days: see *Macclesfield, Mayor of*, v. *Pedley*, 4 B. & Ad. 397; but the grant of a market, with all liberties and free customs to such market belonging, does not imply such a right: *Penryn, Mayor of*, v. *Best*, 3 Ex. D. 292; 48 L. J. Ex. 103; 38 L. T. (N.S.) 805; 27 W. R. 126; 42 J. P. 629. A local Act stated that for preventing encroachments on the markets any person who should sell, among other things, roots, fruit, or garden stuff in any other places within the town than in the market should be liable to a penalty. A. bought vegetables from a dealer in the market and then offered them for sale in the streets of the town—Held, that he had incurred the penalty: *Black* v. *Sackett*, 10 B. & S. 639.

As to what amounts to disturbance of a market, see *Prince* v. *Lewis*, 5 B. & C. 363; *In re Islington Market* v. *Bell*, 3 C. & P. 513; *Holcroft* v. *Heel*, 1 B. & P. 400; *Moseley* v. *Chadwick*, 7 B. & C. 47 (*n.*); *De Rutzen* v. *Lloyd*, 5 A. & E. 456; *Brecon, Mayor of*, v. *Edwards*, 1 H. & C. 51; 8 Jur. (N.S.) 461; 31 L. J. Ex. 368; 6 L. T. (N.S.) 293; 26 J. P. 614; *Dorchester, Mayor of*, v. *Ensor*, L. R. 4 Ex. 335; *London, Mayor of*, v. *Low*, 49 L. J. Q. B. 144; 28 W. R. 250; 43 J. P. 764; *Elwes* v. *Payne*, 12 Ch. D. 468; 48 L. J. Ch. 831; 41 L. T. (N.S.) 118; 28 W. R. 234; *Manchester, Mayor of*, v. *Lyons*, 22 Ch. D. 287; *Goldsmid* v. *Great Eastern Railway*, 25 Ch. D. 511.

(*d*) Where a local Act imposed a toll upon the shops or stalls in the market, and not on the commodities sold there, it was held that a person who sold fruit and fish which were marketable commodities from door to door within the prescribed limits was not liable under this section. *Caswell* v. *Cook*, 11 C. B. (N.S.) 637; 31 L. J. M. C. 185; 27 J. P. 183. A horse is an article within the section: *Llandaff and Canton Market Company* v. *Lyndon*, 8 C. B. (N.S.) 515; 30 L. J. M. C. 105; 6 Jur. (N.S.) 1344; 8 W. R. 693; 25 J. P. 295.

It is to be observed that the section does not enable a person to sell elsewhere than in the market or in a shop on payment of the tolls. Sometimes in local Acts, however, there is provision for selling in the streets, &c., upon obtaining a license or on paying the prescribed tolls. See *Carter* v. *Parkhouse*, 22 L. T. (N.S.) 788.

As to what are marketable commodities within the provisions of a local Act, see *Morgan* v. *Kingdon*, 39 J. P. 471.

(*e*) See section 42, *post*. The owner of a market may remove not only the whole, but a part of it, from one place to another within the compass of his district: *Worthy* v. *Nottingham Local Board*, 2 L. T. (N.S.) 582.

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Penalty for selling or exposing for sale unwholesome meat, &c.

Penalty on obstructing inspector.

XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence (*a*).

Penalty for obstructing market or fair keeper.

XVI. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding forty shillings.

And with respect to slaughter-houses, be it enacted as follows:

* * * * *

Inspector may enter and inspect slaughter-houses.

XX. The inspector of provisions, or any officer appointed by the undertakers for that purpose, may at all times of the day, with or without assistants, enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there; and in case such officer shall find any cattle, or the carcase or part of the carcase of any such cattle, which shall appear unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle, carcase, or part of a carcase, shall be found unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and every person who shall obstruct or hinder such inspector or other officer in the discharge of any of the duties aforesaid shall be liable to a penalty not exceeding five pounds for every such offence (*b*).

And with respect to weighing goods and carts, be it enacted as follows (*c*):

Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

XXI. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and mea-

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(*a*) See the provisions of the Public Health Act, 1875, ss. 116—119, *ante*, pp. 118—122, as to unsound meat, &c. See also section 20, *post*, as to cattle, &c., seized in a slaughter-house.

(*b*) This section is not incorporated in the Public Health Act, 1875, but is inserted as being referred to in section 15, *ante*.

(*c*) Incorporated by the Public Health Act, 1875, s. 167, *ante*, p. 194. As to the purchase, adjusting, and testing of these weighing machines, see the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, Schedule.

sures according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Articles to be weighed if requested by the buyer.

XXII. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding forty shillings.

Penalty for refusal.

Penalty on persons appointed refusing to weigh.

XXIII. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding forty shillings (*d*).

Undertakers to keep proper machines for weighing carts laden with goods.

XXIV. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without loading, as may be required.

Carts to be weighed at one of the machines erected by the undertakers.

XXV. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Penalty on drivers for refusing to take carts to be weighed, &c.

XXVI. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

Penalties on drivers of carts, &c., committing frauds in weighing.

XXVII. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall

(*d*) See also 41 & 42 Vict. c. 49, Schedule.

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commit any of the following offences shall be liable to a penalty not exceeding five pounds for each offence; (that is to say,)

If he at the time of weighing any such cart shall knowingly have anything in or about the same other than the proper loading thereof:

If he alter any ticket denoting the weight of any such cart or the loading of the same:

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof:

If he, after the weighing of any such cart with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket:

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof:

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on buyers or sellers for committing frauds in weighing.

XXVIII. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for frauds committed by the machine keeper.

XXIX. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed:

If he do not fairly weigh every such cart, with or without loading, as the case may be:

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required:

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof:

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively:

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

Penalty on other parties committing frauds as to weighing.

XXX. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

And with respect to the stallages, rents, and tolls to be taken by the undertakers, be it enacted as follows (*a*) :

Tolls, &c., not to be demanded until market or fair completed.

XXXI. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

Certificate of two justices to be evidence that market or fair is completed.

XXXII. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid ; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use.

Stallages, &c., when to be paid.

XXXIII. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorized by the undertakers to receive the same.

Tolls to be paid to persons authorized before the same are weighed, &c.

XXXIV. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorized by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured.

Tolls in respect of cattle market when due.

XXXV. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market place, and before the cattle are put into any pen, or tied up in such market place ; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed.

Stallages, tolls, &c., may be varied from time to time.

XXXVI. The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorized by the special Act.

Penalty on taking a greater toll than authorized by this or the special Act.

XXXVII. Every person who shall demand or receive a greater toll than that authorized to be taken under the provisions of this or the special Act shall for every such offence be liable to a penalty not exceeding forty shillings.

(*a*) Incorporated with 38 & 39 Vict. c. 55, by s. 167, *ante*. No tolls are leviable by the local board unless, as regards such as were established between 1858 and 1872, they were approved of by the Secretary of State; and as regards such as have been or shall be approved of by the Local Government Board, see 21 & 22 Vict. c. 98, s. 50; 34 & 35 Vict. c. 70; and 38 & 39 Vict. c. 55, s. 167, *ante*. The tolls therein referred to are interpreted by the board, to be tolls on buying and selling. They do not approve of stallages, rents, or pickage tolls.

As to the return of tolls which must be made under the Local Taxation Returns Act, see the Act, *post*, 23 & 24 Vict. c. 51.

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Recovery of tolls by distress, &c.

XXXVIII. If any person liable to the payment of any stallage, rent, or toll authorized by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorized by the undertakers or their lessee to collect the same, may levy the same in *England* or *Ireland* by distress, and in *Scotland* by poinding and sale, of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any court having competent jurisdiction.

Disputes respecting tolls, how to be settled.

XXXIX. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in *England* or *Ireland* by a justice, and in *Scotland* by the sheriff, and such justice or sheriff shall on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand of the money which shall be so awarded, and of the costs, the same shall be forthwith levied in *England* or *Ireland* by distress, and in *Scotland* by poinding and sale, and the justice or sheriff shall isue his warrant accordingly.

Penalty for obstructing collector of rents, &c.

XL. Every person who shall assault or obstruct any person authorized to collect any stallage, rent, or toll authorized by this or the special Act, shall for every such offence be liable to a penalty not exceeding forty shillings.

List of tolls, &c., to be set up and placed in conspicuous places.

XLI. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

And with respect to the bye-laws to be made by the undertakers be it enacted as follows (*a*):

(*a*) The Public Health Act, 1875, s. 167, *ante*, p. 194, provides that an urban authority may make bye-laws for any of the purposes mentioned in the above section. These bye-laws will be made under the Public Health Act, and the remaining sections of this Act as to bye-laws need not therefore be referred to. Model bye-laws under this section have been issued by the Local Government Board.

A bye-law made by a local board prevented persons from throwing skins upon any part of the ground occupied by the market, or the immediate approaches, or in any cart standing thereon, without being authorized so to do by the superintendent of the market. This was held to be too general, and therefore bad, as in restraint of trade. *Worthy*, app., *Nottingham Local Board*, resp., 21 L. T. (N.S.) 582.

As to the confirmation of bye-laws made under this section see 47 Vict. c. 12, *ante*, p. 468.

XLII. The undertakers may from time to time make such bye-laws as they think fit for all or any of the following purposes; (that is to say), Bye-laws may be made for all or any of the purposes herein named.

For regulating the use of the market place and fair and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

For fixing the days, and the hours during each day, on which the market or fair shall be held:

For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein:

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act:

For regulating the use of the weighing machines provided by the undertakers, and for preventing the use of false or defective weights, scales, or measures:

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.

THE GASWORKS CLAUSES ACT, 1847.

(10 Vict. Cap. 15) (*b*).

An Act for consolidating in One Act certain provisions usually contained in Acts authorizing the making of Gasworks for supplying Towns with Gas. [23rd April, 1847.]

Whereas it is expedient to comprise in one general Act sundry provisions usually contained in Acts of Parliament authorizing the construction of gasworks for supplying towns with gas, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such Extent of Act.

(*b*) The Public Health Act, 1875, section 161, *ante*, p. 186, enables an urban authority to obtain a provisional order authorizing a gas undertaking under the Gas and Waterworks Facilities Act, 1870 (33 & 34 Vict. c. 70), and any Act amending the same (36 & 37 Vict. c. 89.) These Acts, which are set out, *post*, incorporate this Act, and in consequence the amending Act of 1871, 34 & 35 Vict. c. 41, both of which are therefore included in this Appendix.

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gasworks as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretations in this Act:

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

"Special Act:"

"prescribed:"

"the lands:"

"the undertaking:"

"the undertakers:"

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed authorizing the construction of gasworks, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the gasworks and the works connected therewith by the special Act authorized to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorized to construct the gasworks.

Interpretations in this and the special Act:

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say),

Number:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender:

Words importing the masculine gender shall include females:

"Person:"

The word "person" shall include corporation, whether aggregate or sole:

"Lands:"

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure:

"Street:"

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act:

"The gasworks:"

The expression "the gasworks" shall mean the gasworks and the works connected therewith by the special Act authorized to be constructed:

"Gas rate:"

The expression "gas rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of gas:

"Month:"

The word "month" shall mean calendar month;

"Superior courts:"

The expression "superior courts," where the matter submitted to the cognizance of the superior courts arises in *England* or *Ireland*, shall mean Her Majesty's superior court of record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the county Palatine of *Lancaster*, and the Court

of Pleas of the county of *Durham;* and where such matter arises in *Scotland* it shall mean the Court of Session:

"Oath:" The word "Oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace, and in *Scotland* stewartry, and any ward or other division of a county or stewartry having a separate sheriff; and it shall also include county of a city or county of a town:

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices:"

"Sheriff:" The word "sheriff" shall mean the sheriff depute of the county or ward of a county in *Scotland* and the steward depute of the stewartry in *Scotland* in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of the Act. IV. In citing this Act in other Acts of Parliament and in legal instruments, it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

Form in which portions of the Act may be incorporated in other Acts. V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (*a*):

(*a*) See on this subject the cases cited in the notes to the Public Health Act, 1875, section 149, *ante*, p. 151. As to the liability of the company for an accident caused while breaking up a pavement, see *Hornby* v. *Liverpool United Gas Company*, 47 J. P. 231.

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Power to break up streets, &c., under superintendence, and to open drains.

VI. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be (*a*) in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Not to enter on private land without consent.

VII. Provided always, that nothing herein shall authorize or empower the undertakers to lay down or place any pipe or other works into, through, or against any building, or in any land, not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down (*b*).

Notice to be served on persons having control, &c., before breaking up streets or opening drains.

VIII. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen (*c*).

Streets or drains not to be broken up except under superintendence of persons having control of the same.

IX. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined

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(*a*) As to this phrase see *R.* v. *East and West India Docks*, 2 E. & B. 466; 22 L. J. Q. B. 380.

(*b*) As to breaking up occupation roads not dedicated to the public, see *Selby* v. *Crystal Palace District Gas Company*, 31 L. J. Ch. 595. Arches in a roadway occupied as cellars are *buildings*. *Thompson* v. *Sunderland Gas Company*, 2 Ex. D. 429.

(*c*) Consent is not necessary. *Dover Gaslight Company* v. *Dover* (*Mayor, &c. of,*) *ante*, p. 152. As to what notice must be given, see *Edgware Highway Board* v. *Colne Valley Railway Company*, 46 L. J. Ch. 889. As to the right of support of pipes laid in a highway, see *Normanton Gas Company* v. *Pope*, 52 L. J. Q. B. 629.

by two justices ; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain : Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, &c., fail to superintend, undertakers may perform the work without them.

X. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Streets, &c., broken up to be reinstated without delay.

XI. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorized to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any delay as aforesaid shall continue after they shall have received notice thereof.

Penalty for delay in reinstating streets, &c.

XII. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take

In case of delay other parties may reinstate

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and recover the expenses.

place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows:

Power of the company to contract for lighting streets, &c.

XIII. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp-posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, and other persons (*a*).

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Recovery of rents due for gas.

XVI. If any person supplied with gas by virtue of this or the special Act, neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service pipe, or by such means as the undertakers shall think fit . . . . (*b*).

* * * * *

And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:

Penalty for fraudulently using the gas of the undertakers.

XVIII. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas, or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued,

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(*a*) See the Public Health Act, 1875, section 161, *ante*, p. 186. Sections 14 and 15 are repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. s. 66, except in so far as incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply.

(*b*) The remainder of this section was repealed by the Statute Law Revision Act, 1875, as also was section 17, except in so far as incorporated with special Acts to which 34 & 35 Vict. c. 41, does not apply.

or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into (*c*).

Penalty for wilfully damaging pipes.

XIX. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipes.

XX. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable.

And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows (*d*):

Penalty on undertakers for causing water to be corrupted.

XXI. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior court within six months.

XXII. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled, by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased (*e*).

Daily penalty during the continuance of the offence.

XXIII. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such

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(*c*) As to larceny of gas, see *Reg.* v. *White*, 22 L. J. M. C. 123; *Reg.* v. *Foster*, L. R. 1 C. C. R. 172. As to the operation of the Statute of Limitations, when there has been a fraudulent concealment of an improper using of gas within this section, see *Imperial Gaslight and Coke Company* v. *London Gaslight Company*, 23 L. J. Ex. 303.

(*d*) See also the provisions of the Public Health Act, 1875, section 68, and the notes thereon; the Waterworks Clauses Act, 1847, sections 61—67, *post*; and the Rivers Pollution Act, 1875, *post*.

(*e*) As to the effect of this section on a local Act, see *Parry* v. *Croydon Commercial Gas Company*, 15 C. B. (N.S.) 568.

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water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

XXIV. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice (*a*).

Penalty if water contaminated by gas.

XXV. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to examine gas pipes to ascertain cause of contamination, if notice be given of the same.

XXVI. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

Expenses to abide result of examination.

XXVII. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

How expenses to be ascertained.

XXVIII. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers shall, in case of any

(*a*) See *Moss* v. *Hastings and St. Leonards Gas Company*, 4 F. & F. 324; *Burrows* v. *March Gas and Coke Company*, L. R. 7 Ex. 96 : 41 L. J. Ex. 46.

dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered. Appndx.

XXIX. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas (*b*). Nothing to exempt undertakers from being indicted for a nuisance.

And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows :

XXX. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate. Profits of the company limited.

XXXI. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities ; and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one tenth of the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers ; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen. If profits exceed the amount limited, excess to be invested and form a reserve fund.

XXXII. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in *England* or *Ireland* by two justices, and in *Scotland* by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act. Reserved fund not to be resorted to, unless to meet an extraordinary claim.

XXXIII. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one tenth of the nominal capital of When fund amounts to prescribed sum, interest to be applied to purposes of undertaking.

(*b*) See the Public Health Act, 1875, sections 91—111, *ante*, pp. 92—112, as to the proceedings in respect of a nuisance. A company cannot justify a nuisance by setting up incapacity to make or supply gas without so doing. *Attorney-General* v. *Gaslight and Coke Company*, 7 Ch. D. 217 ; 47 L. J. Ch. 534 ; 37 L. T. (N.S.) 746 ; 26 W. R. 125.

Appndx. the company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

If profits are less than prescribed rate, a sum may be taken from the reserved fund to supply deficiency.

XXXIV. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of gas.

XXXV. In *England* or *Ireland* the court of quarter sessions, and in *Scotland* the sheriff may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said court or sheriff), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions or to the sheriff; and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate.

Court may order petitioner to pay costs of groundless petition.

XXXVI. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Penalty on undertakers for refusing to produce books, vouchers, &c.

XXXVII. If the undertakers shall, for seven days after being required to produce to the said court or sheriff, or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days, such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts.

Annual account to be made up by

XXXVIII. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each

year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account, if the gasworks be situated in *England* or *Ireland*, shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate, and if the gasworks be situated in *Scotland*, such copy shall be transmitted, free of charge as aforesaid, to the sheriff clerk of such county, and such transmission shall be made on or before the thirty-first day of *January* in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace or sheriff clerk shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection.

Undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

XXXIX. And with respect to tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such person make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made the defendant may, by leave of the court where such action is pending, at any time before issue joined, pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

XL. If the gasworks be in *England* or *Ireland*, the clauses of the Railways Clauses Consolidation Act, 1845 (*a*), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices shall be incorporated with this and the special Act; and if the gasworks be in *Scotland*, the clauses of the Railways Clauses Consolidation Act (*Scotland*), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act, and such clauses shall apply to the gasworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company" (*b*).

The Railway Clauses Consolidation Act, 1845, as to damages, &c., to be incorporated with this and the special Act.

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XLII. All things herein, or in the special Act or any Act incorporated therewith, authorized or required to be done by two justices,

All things required to be done by two justices in England and Ireland may, in certain cases,

(*a*) See *ante*, p. 549.

(*b*) Section 41 was repealed by the Statute Law Revision Act, 1875.

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may and shall be done in *England* and *Ireland* by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in *Scotland* by the sheriff or steward of any county, stewartry, or ward, or his substitute.

be done by one, and in Scotland by the sheriff. &c.

Penalties, &c., imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

XLIII. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intituled *An Act for regulating the Police Courts in the Metropolis;* and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons giving false evidence liable to penalties of perjury.

XLIV. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by undertakers in their office, and deposited with the clerks of the peace, &c., and be open to inspection.

XLV. The undertakers shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace in *England* or *Ireland*, and of the sheriff clerk in *Scotland*, of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intitutled *An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Order of either House of Parliament.*

7 W. 4 & 2 Vict. c. 83.

Penalty on undertakers failing to

XLVI. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit

twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

keep or deposit such copies.

XLVII. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein*, or from the laws of sewers for the time being in force within ten miles from the *Royal Exchange* in the City of *London*.

Undertakers not exempt from the provisions of 57 Geo. 3, c. xxx. or from the laws regulating sewers.

XLVIII. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to Her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of Her Majesty in right of her Crown, or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of Her Majesty, in any part of the United Kingdom of *Great Britain* and *Ireland*.

Nothing in this or the special Act to affect the rights of the Crown.

XLIX. And be it enacted, that nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament.

Undertakers not exempted from provisions of any future general Act.

* * * * *

THE WATERWORKS CLAUSES ACT, 1847.

(10 Vict. Cap. 17) (*a*).

An Act for consolidating in One Act certain Provisions usually contained in Acts authorizing the making of Waterworks for supplying Towns with Water. [23rd April, 1847.]

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorizing the construction of waterworks for supplying towns with water, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the

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(*a*) Incorporated by the Public Health Act, 1875, s. 57, *ante*, p. 66 (together with the amending Act of 1883, 46 & 47 Vict. c. 93, *post*), and also by the Public Health (Support of Sewers) Act, 1883, *ante*, p. 463.

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provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such waterworks as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or accepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

Interpretations in this Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

"Special Act:"

"prescribed:"

"the lands and streams:"

"the undertaking:"

"the undertakers."

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed authorizing the construction of waterworks, and with which this Act shall be incorporated; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorized to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorized to construct the waterworks.

Interpretations in this and the special Act:

III. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number:

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender:

Words importing the masculine gender shall include females:

"Person:"

The word "person" shall include a corporation, whether aggregate or sole:

"Lands:"

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure:

"Streams:"

The word "streams" shall include springs, brooks, rivers, and other running waters:

"Street:"

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act:

"the Waterworks:"

The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorized to be constructed:

The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water: "Water rate:"

The word "month" shall mean calendar month: "Month:"

The expression "superior courts," where the matter submitted to the cognizance of the court arises in *England* or *Ireland*, shall mean Her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster* and the Court of Pleas of the county of *Durham*, and where such matter arises in *Scotland* it shall mean the Court of Session: "Superior courts:"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath:"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and in *Scotland* stewartry, and any ward or other division of a county or stewartry having a separate sheriff, and it shall also include county of a city or county of a town: "County:"

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction, shall mean a justice acting for the county or place where any part of such lands or streams shall be situated; and where any matter is authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices met and acting together: "Justice:" "two justices:"

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in *Scotland* and the steward depute of the stewartry in *Scotland* in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively: "Sheriff:"

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace: "Quarter sessions:"

The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act: "The town commissioners:"

The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts. "Inspector:"

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And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Waterworks Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

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And with respect to mines, be it enacted as follows (*a*):

Undertakers not entitled to mines unless previously purchased.

XVIII. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals (*b*) under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Map and plan of underground works of undertakers to be made.

XIX. The undertakers shall from time to time within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water, and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the

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(*a*) These sections, 18—27, are incorporated by the Public Health (Support of Sewers) Act, 1883, *ante*, p. 463.

(*b*) Minerals include freestone (*Bell* v. *Wilson*, L. R. 1 Ch. 303); stone got from quarries (*Micklethwait* v. *Winter*, 6 Ex. 644); every substance which can be got from underneath the surface of the earth for purposes of profit, such as china clay (per MELLISH, L. J., in *Hext* v. *Gill*, L. R. 7 Ch. at p. 712; *Midland Railway Company* v. *Checkley*, L. R. 4 Eq 19).

date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district (*c*).

Copies of such map or plan to be deposited with clerk of the peace, &c.

XX. The undertakers shall from time to time within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in *England* or *Ireland*, and with the sheriff clerks in *Scotland*, of every county, and the town clerk of every burgh in *Scotland*, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in *England*, and clerks of the union of the several parishes in *Ireland*, and the schoolmasters of the several parishes in *Scotland* in which such underground works shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties, burghs, and parishes respectively.

Clerks of the peace, &c., to receive and keep copies of the map, &c., and allow inspection.

7 Will. 4 & 1 Vict. c. 83.

XXI. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default as is provided in the case of maps and plans deposited under an Act passed in the first year of the reign of Her Majesty, intituled *An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*

Mines lying near the works not to be worked until owners give notice to undertakers of their intentions.

Upon receipt of notice, undertakers may take the mines, making compensation to the owners.

XXII. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same: and if the undertakers and such owner do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation (*d*).

(*c*) The map required to be made by 46 & 47 Vict. c. 37, s. 3, *ante*, p. 463, must be made before 25th August, 1884.

(*d*) See 46 & 47 Vict. c. 37, s. 3, as to the power of a local authority to define the extent to which they require support to be left, and as to the mode of assessing compensation.

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If company unwilling to treat for payment of compensation, owner may work the mines.

Owners may make good damage occasioned by working the mines in an unusual manner.

XXIII. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner, the same shall be forthwith repaired or removed (as the case may require), and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any of the superior courts.

Mining communications.

XXIV. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Company to make compensation to owner lessee, or occupier of mines for expenses incurred by reason of mines being worked.

XXV. Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals, extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid, touching the price of such minerals the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act if the undertaking shall be situate in *England* or *Ireland*, and by the Lands Clauses Consolidation (*Scotland*) Act if the undertaking shall be situate in *Scotland* (*a*).

Disputes to be settled by arbitration.

(*a*) But see 46 & 47 Vict. c. 37, s. 3, sub-sect. (4), as to the method of settling disputes as to compensation. As to the compensation which may be

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Power to company to enter and inspect the working of mines, after giving notice of the same.

XXVI. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

XXVII. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (*b*):

Power to break up streets, &c., under superintendence, and to open drains.

XXVIII. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Not to enter on private land without consent.

XXIX. Provided always, that nothing herein contained shall authorize or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

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claimed, see *Whitehouse* v. *Wolverhampton and Walsall Railway Company*, L. R. 5 Ex. 6; *Barnsley Canal Navigation Company* v. *Twibell*, 7 Beav. 19; *Ex parte Neath and Brecon Railway Company*, 2 Ch. D. 201.

(*b*) Sections 28—34 are incorporated by the Public Health Act, 1875, s. 57, *ante*, p. 66. See also section 149 of that Act, and the notes thereto; and the corresponding clauses of the Gasworks Clauses Act, 1847, *ante*, p. 577.

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Notice to be served on persons having control, &c., before breaking up streets or opening drains.

XXX. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

XXXI. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof (*a*), or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer.

If persons having the control, &c., fail to superintend, undertakers may perform the work without them.

Streets, &c., broken up to be reinstated without delay.

XXXII. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for delay in reinstating streets, &c.

XXXIII. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of

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(*a*) That is, after notice to the highway authority sufficient to enable them to judge whether what is proposed ought to be done without modification. *Edgware Highway Board* v. *Colne Valley Water Company*, 46 L. J. Ch. 889.

or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorized to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, other parties may reinstate, and recover the expenses.

XXXIV. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Act (*b*).

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And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows (*c*):

Undertakers to lay down communication pipes, on request of occupier and with consent of owners in houses of limited value.

XLIV. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, *with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner* (*d*), and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent (*e*) as shall be agreed upon, or in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in

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(*b*) See the Public Health Act, 1875, s. 251, *ante*, p. 289.

(*c*) Sections 44 to 74 are incorporated by the Public Health Act, 1875, section 57, *ante*, p. 66.

(*d*) These words are to be omitted. See the Public Health Act, 1875, section 57, *ante*, p. 66.

(*e*) This rent may be deducted from the rent paid to the owner. See the Public Health Act, 1875, section 57, *ante*, p. 66.

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England or *Ireland* be settled by two justices, and in *Scotland* by the sheriff; and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained.

Penalty on undertakers for refusal to lay communication pipes.

XLV. If upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

Undertakers to be at liberty to remove pipes, and recover expenses of owners or occupiers.

XLVI. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrears of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special Act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

No greater sum to be recovered from occupiers than amount of rent due.

Owner to be at liberty to purchase the pipes.

XLVII. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent to that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

Power to inhabitants to lay ser-

XLVIII. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to

have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises, by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground (*a*), and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in *England* or *Ireland* by two justices, and in *Scotland* by the sheriff, or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so.

vice pipes, giving the undertakers notice of the same.

XLIX. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in *England* or *Ireland* be settled by two justices, and in *Scotland* by the sheriff, or in either case by the inspector to be appointed as aforesaid.

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor. As to the settling of disputes.

L. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.

LI. Any person who shall have laid down any pipe or other works or who shall have become the proprietor thereof, may remove the same, after having first given six days notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal; and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Service pipes may be removed after giving notice of the same.

Penalty on removing pipes without notice.

LII. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be (*b*), and making compensation for any damage done in the execution

Power to inhabitants to break up pavements, giving notice of the same.

(*a*) Including the owner of the soil of a highway. See *Goodson* v. *Richardson*, L. R. 9 Ch. 221.

(*b*) See *Reg.* v. *East and West India Docks, &c., Railway Company*, *ante*, p. 578.

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of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act (*a*).

Owners or occupiers entitled to demand a supply of water for domestic purposes.

LIII. Every owner and occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes (*b*).

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Persons using the water to provide cisterns and cocks.

LIV. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be supplied, with a ball and stop cock, in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball and stop cock, in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop cock shall be provided or repaired, as the case may require.

Penalty for neglect.

Penalty for suffering cistern, &c., to be out of repair.

LV. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball or stop cock, to be out of repair, so

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(*a*) A waterworks company is not liable for the negligence of an occupier in opening a street under this section. The word pavement as used in this section is not confined to the footpath only. See *Glover* v. *East London Waterworks Company*, 17 L. T. (N.S.) 475.

(*b*) The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house and used for the sole accommodation of the occupier, was held to be for *domestic use* in *Bushby* v. *Chesterfield Waterworks Company*, E. B. & E. 176; 22 Jur. 757; 27 L. J. M. C. 174; 22 J. P. 689. But see 26 & 27 Vict. c. 63, s. 12, *post*. The guardians of a union are entitled under this section to a supply to a workhouse, such a supply being for domestic purposes. *Liskeard Union* v. *Liskeard Waterworks*, 7 Q. B. D. 505; 45 J. P. 780. The phrase "domestic purposes" includes a supply for a fixed bath. *Weaver* v. *Cardiff* (*Mayor of*), 48 L. T. (N.S.) 906; 47 J. P. 599; but not for watering a garden (per JESSEL, M. R., in *Low* v. *Lambeth Waterworks Company*, not reported.)

When a supply was cut off for non-payment of water rates, the company were held not warranted in refusing to supply a subsequent tenant until his arrears were paid. *Sheffield Waterworks Company* v. *Wilkinson*, 4 C. P. D. 410; 48 L. J. M. C. 45.

that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds (*c*).

Undertakers may repair cisterns, &c., and recover the expenses.

LVI. The undertakers may repair any such cistern, pipe, ball or stop cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be recovered as damages.

Power to surveyor employed by undertakers to enter houses to inspect, &c.

LVII. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act, in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

Penalty for allowing persons to use the undertakers waters.

LVIII. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for taking the undertakers water without agreement.

LIX. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds (*d*).

Penalty for destroying valves, &c.

LX. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

(*c*) Section 55 was repealed by the Statute Law Revision Act, 1875, so far as it relates to special Acts with which 26 & 27 Vict. c. 93, *post*, is incorporated.

(*d*) Section 59 is repealed by the Statute Law Revision Act, 1875, to the same extent as section 55, *ante*. This section provides no penalty for taking water from an unoccupied house. See *Piercy* v. *Pope*, 45 L. T. (N.S.) 477; 30 W. R. 60; 46 J. P. 102. See also with reference to this section *Hildreth* v. *Adamson*, *ante*, p. 74. As to larceny of water, see *Ferens* v. *O'Brien*, *ante*, p. 69.

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And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows (*a*):

Penalties for causing the water of the undertakers to be fouled, &c.

LXI. Every person who shall commit any of the offences next hereafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds; (that is to say),

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal:

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing:

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled:

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

Penalty for permitting substances produced in making gas to flow into the undertakers works.

LXII. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds; and such penalty shall be recovered, with full costs of suit, in any of the superior courts; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (*b*).

Penalty to be sued for within six months.

Daily penalty during the continuance of the offence.

LXIII. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Penalty on gas makers causing water to be fouled.

LXIV. When the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of

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(*a*) See also 26 & 27 Vict. c. 93, ss. 16—20, *post*.

(*b*) See the Gasworks Clauses Act, 1847, s. 21, *ante*, p. 581, and the note thereto; and the Public Health Act, 1875, s. 68, *ante*, p. 77.

the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence. Appndx.

Power to examine gas pipes, to ascertain cause of water being fouled.

LXV. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay, or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes (*c*).

The expenses to abide the result of the examination.

LXVI. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

How expenses to be ascertained.

LXVII. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

And with respect to the payment and recovery of the water rates, be it enacted as follows:

Rates to be payable according to the annual value of the premises.

LXVIII. The water rates, except as hereinafter and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving, or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value the same shall be determined by two justices (*d*).

(*c*) See also sections 28—34, *ante*.

(*d*) That is, the net annual value. See the Public Health Act, 1875, s. 56. Annual value, according to the Public Health Act, 1875, s. 56, means *net* annual value as defined by section 4 of that Act, *ante*, p. 8. See also *Sheffield Waterworks Company* v. *Bennett*, L. R. 8 Ex. 196; *New River Company* v. *Mather*, L. R. 10 C. P. 442; *Warrington Waterworks Company* v.

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Where several houses supplied by one pipe each to pay.

LXIX. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Rates to be paid quarterly.

LXX. The rates shall be paid in advance by equal quarterly payments, in *England* or *Ireland* at *Christmas Day*, *Lady Day*, *Midsummer Day*, and *Michaelmas Day*, and in *Scotland* at *Martinmas*, *Candlemas*, *Whitsuntide*, and *Lammas*, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

Parties giving notice to discontinue use of water or removing, to pay to the next quarter day.

LXXI. The occupier of any dwelling house or part of a dwelling house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling house or part of a dwelling house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Owners of houses not exceeding 10*l.* rent to be liable to water rates.

LXXII. The owners of all dwelling houses or parts of dwelling houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

Tenants under existing leases to repay the owner.

LXXIII. Provided always, that when any owner shall pay any such rate in respect of any such dwelling house or part of a dwelling house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling house or part of a dwelling house; and every such sum of money payable by the tenant to the owner, under the provision hereinbefore contained, may be recovered if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Longshaw, 9 Q. B. D. 145; *Dobbs* v. *Grand Junction Waterworks Company*, 9 App. Cas. 49; *Smith* v. *Birmingham* (*Mayor of*), 11 Q. B. D. 195; 47 J. P. 645.

LXXIV. If any person supplied with water by the undertakers, or liable as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action, in any court of competent jurisdiction (*a*). Rates how to be recovered.

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THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

(10 & 11 Vict. Cap. 34) (*b*).

An Act for consolidating in One Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns. [21st June, 1847.]

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament for paving, draining, cleansing, lighting, and improving towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such towns or districts as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such towns or districts in *England* or *Ireland* as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable Extent of Act.

(*a*) See also 26 & 27 Vict. c. 93, s. 21, *post*. See *Sheffield Waterworks Company* v. *Wilkinson*, *ante*, p. 598.

(*b*) Incorporated by the Public Health Act, 1875, s. 160, *ante*, p. 185, and section 169, *ante*, p. 195.

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thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretations in this Act:

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows:

"the special Act:"

"prescribed:"

"the commissioners:"

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts defined or comprised therein, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

Interpretations in this and the special Act:

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number: Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Gender: Words importing the masculine gender shall include females:

"Person:" The word "person" shall include a corporation, whether aggregate or sole:

"Lands:" The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure:

"Street:" The word "street" shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special Act:

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts" shall mean Her Majesty's Superior Courts of Record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster* and the Court of Pleas of the County of *Durham:*

"Oath:" The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County:" The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter is authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices:"

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined

shall mean the court of general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises requiring the cognizance of any such court, and having jurisdiction over such district:

"Owner:" The word "owner," used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rackrent, would be entitled to receive the rackrent from the occupier thereof:

"Cattle:" The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

And with respect to citing this Act, or any part thereof, be it enacted as follows:

Short title of this Act. IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Towns Improvement Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts. V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

And with respect to naming the streets and numbering the houses, be it enacted as follows (*a*):

Houses to be numbered and streets named. LXIV. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street the name by which such street is to be known; and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence (*b*).

Numbers of houses to be renewed by occupiers. LXV. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or

(*a*) These clauses are incorporated with the Public Health Act, 1875, by section 160, *ante*, p. 185.

(*b*) As to the recovery of this penalty, see section 316, *ante*, p. 367.

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defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings; and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages (*a*).

And with respect to improving the line of the streets, and removing obstructions, it be enacted as follows (*b*):

Houses may be set forward for improving line of street.

LXVI. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated (*c*).

Commissioners may purchase houses or ground for effecting additional improvements.

LXVII. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall re-sell any parts of the lands so purchased which shall not be wanted for the enlargement of the street.

Houses projecting beyond line of street, when taken down to be set back.

LXVIII. When any house or building, any part of which projects beyond the regular line of the street, (*cc*) or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the

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(*a*) As to the recovery of this penalty, see section 316, *ante*.

(*b*) These clauses are incorporated with the Public Health Act, 1875, by section 160, *ante*.

(*c*) The word *street* is here used in its popular acceptation of a line of buildings, and does not include a highway generally. This section gives no power to divest a highway by widening it; that can only be done under the Highway Acts: *Reg.* v. *Platts*, 28 W. R. 915.

(*cc*) This does not mean a strict mathematical line, but a substantially regular line: *Tear* v. *Freebody*, *ante*, p. 172. No general line of buildings may exist in some cases; see *The Ecclesiastical Commissioners* v. *St. James, Clerkenwell*, 7 Jur. (N.S.) 326. *Tear* v. *Freebody*, was explained by WILLES, J., in *Simpson* v. *Smith*, *supra*; and see *Lord Manners* v. *Johnson*, 1 Ch. D. 673. When houses project and are pulled down, and the land sold for building purposes, new houses may be built on the same line as before, unless compensation be given. In determining the general line, therefore, regard ought to be had to the frontage of houses previously existing, and which may be rebuilt, as well as to those still standing: *Lord Auckland* v. *Westminster Board of Works*, L. R. 7 Ch. 598.

As to the determination of the general line of buildings in the metropolis, see *St. George, Hanover Square*, v. *Sparrow*, 16 C. B. (N.S.) 209; *Bauman* v. *St. Pancras Vestry*, L. R. 2 Q. B. 528; *Wandsworth Board of Works* v. *Hall*, L. R. 4 C. P. 85; *Simpson* v. *Smith*, L. R. 6 C. P. 87; 40 L. J. C. P. 89; *Lord Auckland* v *Westminster Board of Works*, *supra*; *Paddington Vestry* v. *Snow*, 30 W. R. 46; *Barlow* v. *Kensington Vestry*, 31 W. R. 514; *Plumstead Board of Works* v. *Spackman*, 50 L. T. (N.S.) 690.

improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains (*d*). Appndx.

Future projections of houses, &c., to be removed on notice.

LXIX. The commissioners may give notice to the occupier (*g*) of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building (*e*).

Commissioners may cause existing projections to be removed, and compensation to be made.

LXX. If any such obstruction or projection were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they may think fit (*f*); provided that they give notice of such intended removal or alteration to the occupier (*g*) of

(*d*) See also the Public Health Act, 1875, s. 155, *ante*, p. 172, and the notes thereto.

(*e*) As to area railings, see *Bouverie* v. *Miles*, 1 B. & Ad. 38; as to a projecting shop front, see *Reg.* v. *Ingham*, 17 Q. B. 884. A corresponding section of the Metropolis Management Act, 19 & 20 Vict. c. 120, was held not to justify the removal of a shed and seats erected by a publican upon a piece of ground between the footway and the roadway, the intervening space being found not to be part of the street, and the shed and seats not being against or in front of any house. *Le Neve* v. *Mile End Old Town, Vestry of*, *ante*, p. 9. As to a dedication of a street subject to existing obstructions or projections, see *Foster* v. *Prowse*; *Cooper* v. *Walker*, 2 B. & S. 770, where such dedication was held to be an answer in actions for accidents caused by cellar flaps and projecting doorsteps. As to projections existing before the passing of a local Act, see *Wilson* v. *Cunliffe*, 29 L. T. (N.S.) 913; 38 J. P. 231; *Whittaker* v. *Rhodes*, 46 J. P. 182. As to the liability of the occupier for accidents caused by projections, see *Tarry* v. *Ashton*, 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. (N.S.) 97; 24 W. R. 581; 40 J. P. 439.

It will be for the magistrate to decide whether the thing complained of is an obstruction to the passage. See *Gabriel* v. *St. James's, Westminster*, 23 J. P. 372, where the court intimated that this could be decided without calling a person to prove he had been actually obstructed. This was also decided in *Read* v. *Perrett*, 1 Ex. D. 349; 41 J. P. 135. A projection consisting of an oriel window, the lowest part of which is fifteen feet above the pavement, is not an obstruction. See *Goldstraw* v. *Duckworth*, 5 Q. B. D. 275; 49 L. J. M. C. 73; 44 J. P. 410.

(*f*) See *Bagshaw* v. *Buxton Local Board*, *ante*, p. 148.

(*g*) Or *owner*. See the Public Health Act, 1875, s. 160, *ante*, p. 186.

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the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors in future to be made to open inwards.

LXXI. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier (*a*) of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier (*a*), and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding forty shillings.

Doors opening outwards may be altered.

LXXII. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupier.

LXXIII. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier (*a*) of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and

Penalty for neglect.

if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

Water-spouts to be affixed to houses or buildings.

LXXIV. The occupier (*a*) of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath; and in default of compliance with any such order within the period aforesaid such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default (*b*).

(*a*) Or *owner*. See the Public Health Act, 1875, section 160, *ante*, p. 186.

(*b*) See the Public Health Act, 1875, s. 160, *ante*, p. 186, as to the recovery of these costs from the owner, and the deduction of them from the rent, as in the case of private improvement rates.

And with respect to ruinous or dangerous buildings, be it enacted as follows : **Appndx.**

Ruinous or dangerous buildings to be taken down or secured by owners, &c.

LXXV. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner (*c*) of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require ; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices (*d*), and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite ; and all the expenses (*e*) of putting up such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

If owner, &c., neglect to repair, commissioners may cause the same to be done, charging owner, &c., with the expenses.

The expenses to be levied by distress on the owner.

LXXVI. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly (*f*).

If owner cannot be found, commissioners

LXXVII. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot

(*c*) *Reg.* v. *Lee*, 4 Q. B. D. 75, where it was held that the incumbent of a church was not the owner so as to render him liable in respect of its dangerous condition. The owner may remain liable under this section though a notice has been served upon him for the purpose of compulsorily taking his buildings under the Artizans Clauses Act. *Barnett* v. *Metropolitan Board of Works*, 46 L. T. (N.S.) 384; 46 J. P. 469.

(*d*) Compare the provisions of a local Act in *Cheetham* v. *Manchester Corporation*, 39 J. P. 343.

(*e*) As to the expenses which may be recovered, see *Debenham* v. *Metropolitan Board of Works*, 6 Q. B. D. 112.

(*f*) These expenses must be recovered within six months from the date of demand. See the cases in the notes to section 252 of the Public Health Act, 1875, *ante*, p. 290.

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may take the house or ground, making compensation provided by 7 & 8 Vict. c. 18.

be made, the commissioners, after giving twenty-eight days notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building, or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845 (*a*), in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

LXXVIII. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows:

Bars to be erected across streets while repairs or alterations are making, and lights placed at night.

LXXIX. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding five pounds.

Hoards to be set up during repairs.

LXXX. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and

(*a*) Section 18, *et seq.*, *ante*, p. 510.

shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (*b*).

Penalty for not lighting deposits of building materials or excavations.

LXXXI. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising while such materials or hole remain; and such person shall at his own expense cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (*c*).

Penalty for continuing deposits of building materials or excavations an unreasonable time.

LXXXII. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Dangerous places to be repaired or inclosed.

LXXXIII. If any building or hole or any other place near any street (*d*) be, for want of sufficient repair, protection, or inclosure,

(*b*) As to the right to erect a hoarding, though it may obstruct a highway to some extent, see *Fisher* v. *Prowse, ante*, p. 607. As to the liability for damages for wrongfully erecting and continuing a hoarding, see *Bradbee* v. *Christ's Hospital*, 4 M. & G. 714. As to a case where a license for a hoarding was required by a local Act, see *Reg.* v. *Commissioners of Sewers*, 22 L. T. (N.S.) 582.

(*c*) In *Fearnley* v. *Ormsby*, 4 C. P. D. 136, it was held that a surveyor of highways was rightly convicted under section 72 of the Highway Act, 1835, for leaving materials for the repair of the road without lights and fences at night.

(*d*) A goit running by the side of an ancient public footpath was held not to be a hole or other place within the meaning of these words. *Wilson* v. *Mayor, &c., of Halifax, ante*, p. 151.

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dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

* * * * *

And with respect to slaughter-houses, be it enacted as follows:

Commissioners may license slaughter-houses, &c.

CXXV. The commissioners may license (*a*) such slaughter-houses and knacker's yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

No new slaughter-houses in future to be erected without a license.

CXXVI. No place shall be used or occupied as a slaughter-house (*b*) or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act (*c*), and has so continued ever since, unless and until a license for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such license as aforesaid, uses (*d*) as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, &c., to be registered.

CXXVII. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's yard shall, within three months after the passing of such Act, be registered by the owner or occupier thereof at the office of the commissioners, and on application to

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(*a*) A resolution of a committee, confirmed by the board, was held to be equivalent to a license, though not communicated to the grantee. *Howarth* v. *Manchester, Mayor of*, 6 L. T. (N.S.) 683. A license for the erection of a slaughter-house is sufficient to authorize its use. *Anthony* v. *Brecon, infra.*

(*b*) This Act does not apply only to places where cattle are slaughtered for human food, as in *Elias* v. *Nightingale*, 8 E. & B. 698; 4 Jur. (N.S.) 166; 27 L. J. M. C. 151.

(*c*) The application of premises for the slaughter of bullocks which had been used for the slaughter of pigs before the Act came into operation does not take the case out of the exception. *Brighton Local Board* v. *Stenning*, 15 L. T. (N.S.) 567. The enlargement of premises does not destroy their exemption. *Hanman* v. *Adkins*, 40 J. P. 744.

(*d*) A person who merely pays the owner of premises for being allowed to slaughter animals there does not use such premises as a slaughter-house within this section. *Reg.* v. *Heyworth*, 14 L. T. (N.S.) 600; 30 J. P. 423. A market company who had not used any part of their premises as a slaughter-house before this Act was applied to the district were held to be rightly convicted under this section for using part of their premises as a slaughter-house after the Act was applied. *Liverpool New Market Company* v. *Hodson* 15 L. T. (N.S.) 534. As to what is a sufficient license, see *Anthony* v. *Brecon Market Company*, L. R. 7 Ex. 399; *Hughes* v. *Trew*, 36 L. T. (N.S.) 585; 41 J. P. 453.

the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding five pounds for such offence, and a penalty not exceeding ten shillings for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commissioners may make bye-laws for regulation of slaughter-houses, &c.

CXXVIII. The commissioners shall from time to time, by bye-laws (*e*) to be made and confirmed in the manner hereinafter provided, make regulations for the licensing, registering, and inspection of the said slaughter-houses, and knacker's yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such bye-laws; provided that no such penalty exceed for any one offence the sum of five pounds, and in the case of a continuing nuisance the sum of ten shillings for every day during which such nuisance shall be continued after the conviction for the first offence.

Justices may suspend license of slaughter-houses, &c. in addition to penalty imposed.

CXXIX. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the bye-laws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding two months the license granted to such person under this or the special Act, or, in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the license granted under this or the special Act revoked, or, if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the license of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid; the commissioners may refuse to grant any license whatever to the person whose license has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Penalty for slaughtering cattle during suspension of license, &c.

CXXX. Every person who during the period for which any such license is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such license relates, or otherwise uses such slaughter-house or knacker's yard, or

(*e*) See the Markets and Fairs Clauses Act, 1847, section 42, *ante*, p. 575. The Local Government Board have issued model bye-laws for the regulation of slaughter-houses. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 468.

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allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding five pounds for such offence, and a further penalty of five pounds for every day on which any such offence is committed after the conviction for the first offence.

Officers may enter and inspect slaughter-houses, &c.

CXXXI. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butcher's meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons (*a*); and in case, upon such inspection and examination, such cattle, carcase, or part of a carcase, be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle, carcase, or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding ten pounds for every such animal or carcase or part of a carcase so found; and the owner or occupier of any building or place kept or used for the sale of butcher's meat, or for slaughtering cattle, and every other person who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal or carcase or part of a carcase so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding five pounds for each offence.

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THE BATHS AND WASH-HOUSES ACT, 1847.

(10 & 11 Vict. Cap. 61) (*b*).

An Act to amend the Act for the Establishment of public Baths and Wash-houses. [2nd July, 1847.]

9 & 10 Vict. c. 74.

Whereas an Act was passed in the last session of Parliament, intituled *An Act to encourage the Establishment of public Baths and Wash-houses:* And whereas it is expedient to afford additional facilities for the establishment of public baths and wash-houses and open bathing-places; be

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(*a*) See also the Public Health Act, 1875, section 116, *ante*, p. 118.

(*b*) See 9 & 10 Vict. c. 74, *ante*, p. 554; 41 & 42 Vict. c. 14; and 45 & 46 Vict. c. 30, *post*.

it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the recited Act, as amended by this Act, and this Act shall be construed and carried into execution as one Act.

Recited Act and this Act to be construed as one.

II. And be it enacted and declared that the following words and expressions in the recited Act shall have in the said Act and this Act the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,)

Interpretation of expressions in recited Act and this Act.

"Parish" shall mean not only every place having separate overseers of the poor and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry (*c*):

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish (*d*):

"Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry.

Acts of Commissioners of Public Baths, &c. to be valid, notwithstanding informalities.

III. . . . . (*e*). And all Acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity.

Incorporation of 8 & 9 Vict. c. 18.

Council, &c., not to take lands, &c.

IV. And be it enacted, that the Lands Clauses Consolidation Act, 1845 (*f*), shall be incorporated with the recited Act and this Act: provided always, that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Proportion of washing accommodation for labouring classes.

V. And be it enacted, that the number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes, if more than one, in the same building or buildings (*g*).

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Power to make charges for use of baths, &c., not exceeding those in the schedule.

VII. And be it enacted, that the council and commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the schedule annexed to this Act.

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(*c*) See note (*d*) to 9 & 10 Vict. c. 74, s. 2, *ante*, p. 554.

(*d*) These words do not require actual payment of the rates.

(*e*) The previous part of this section was repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(*f*) *Ante*, p. 505.

(*g*) See as to baths, 9 & 10 Vict. c. 74, s. 36, *ante*, p. 569. Section 6 was repealed by the Statute Law Amendment Act, 1875, as also was section 8.

SCHEDULE to which this Act refers.

Charges for the Baths and Wash-houses and open Bathing Places.

1. Baths for the Labouring Classes.

Appndx. Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old:

Cold bath, or cold showerbath, any sum not exceeding - - - - - - - - - One Penny.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding - - - - - Two-pence.

For several children, not above eight years old, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding - - - - - - - - Two-pence.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding - - - - Four-pence.

2. Baths of any higher Class.

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

3. Wash-houses for the Labouring Classes.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying:

For one hour only in any one day, any sum not exceeding - - - - - - - - - One Penny.

For two hours together, in any one day, any sum not exceeding- - - - - - - - Three-pence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. Wash-houses of any higher Class.

Such charges as the council and the commissioners respectively think fit.

5. Open Bathing Places where several persons bathe in the same water, for one person one Halfpenny (*a*).

(*a*) This charge is now increased to one penny, 41 Vict. c. 14, s. 14.

THE CEMETERIES CLAUSES ACT, 1847.

(10 & 11 Vict. Cap. 65) (*b*).

An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making of Cemeteries. [9th July, 1847.]

Appndx.

WHEREAS it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorizing the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such cemeteries as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorized thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

Interpretations in this Act.

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the making of a cemetery, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the company" shall mean the persons by the special Act authorized to construct the cemetery.

"Special Act:"

"prescribed:"

"Lands:"

"Company."

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Number:

(*b*) This Act is incorporated with the Public Health (Interments) Act, 1879, *ante*, p. 456.

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Gender: "Person:" "Lands:"

Words importing the masculine gender shall include females:
The word "person" shall include a corporation, whether aggregate or sole:
The word "lands" shall include messuages, lands, and hereditaments of any tenure:

"The cemetery:"

The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorized to be constructed:

"Month:"

The word "month" shall mean calendar month.

"Superior courts:"

The expression "superior courts" shall mean Her Majesty's superior courts at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the county palatine of *Lancaster* and the Court of Pleas of the county of *Durham:*

"Oath:"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"Established Church:"

The expression "Established Church" shall mean the united church of *England* and *Ireland* as by law established:

"County:"

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town:

"Justice:"

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorized or required to be done by "two justices" the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices:"

"Quarter sessions."

The expression "quarter sessions" shall mean quarter sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

IV. In citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the making of the cemetery, be it enacted as follows : **Appndx.**

Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

VI. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845 (*a*), and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorized, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

Errors and omissions in Act or schedule to be corrected by justices, who shall certify the same.

Certificate to be deposited.

VII. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description ; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate as if such omission, mis-statement, or wrong description had not been made.

Copies of plans, &c., to be evidence.

VIII. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Company not to dispose of any land consecrated or used for burials.

IX. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorized by this or the special Act, or any Act incorporated therewith.

Cemetery not to be within a certain

X. No part of the cemetery shall be constructed nearer to any dwelling house than the prescribed distance, or, if no distance be prescribed,

(*a*) *Ante*, p. 505.

Appndx.

distance of houses.

two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house.

Company may build chapels, &c.

XI. The company upon any land which by the special Act they are authorized to use for the purposes of the cemetery may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.

Company may make or widen roads to cemetery.

XII. The company upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

No road to be widened without consent.

XIII. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Owners, &c., may enter into agreements for improving roads for that purpose.

XIV. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

Cemetery to be enclosed and fenced.

XV. Every part of the cemetery shall be enclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed by substantial walls or iron railings of the height of eight feet at least.

Cemetery, &c., to be kept in repair.

XVI. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

Company to make compensation for damages done.

XVII. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

And with respect to preventing nuisance from the cemetery, be it enacted as follows:

Power to make sewers, drains, &c., in and about the cemetery.

XVIII. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

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Certain provisions of Waterworks Clauses Act, 1847, incorporated with this Act.

XIX. When any street or road or sewer shall be opened, with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847 (*a*), with respect to the breaking up streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

Penalty for allowing water to be fouled.

XX. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds.

Penalty to be sued for within six months.

XXI. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter in any of the superior courts, by action or debt or on the case: Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

In addition to penalty of £50, a daily penalty during the continuance of the offence.

XXII. In addition to the said penalty of fifty pounds (and whether such penalty is recovered or not), any person having right to use the water fouled by such offensive matter may sue the company in an action on the case in any court of competent jurisdiction for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

And with respect to burials in the cemetery, be it enacted as follows:

A part of cemetery to be set apart and consecrated for burial of members of Established Church.

XXIII. The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

Consecrated ground to be defined.

XXIV. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.

A chapel in connexion with the Established Church to be constructed.

XXV. The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

Bodies when interred not to be removed without lawful authority.

XXVI. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by

(*a*) *Ante*, p. 593.

Appndx.

law required for the removal of any body buried in the churchyard belonging to a parish church.

Chaplain to be appointed with consent of the bishop.

XXVII. The company shall from time to time, with the approval of the bishop of the diocese in which such cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such license, and to remove such chaplain for any cause which appears to him reasonable.

Chaplain to perform burial service when required.

XXVIII. The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

Other clergymen of the Established Church may be allowed to officiate.

XXIX. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

Company to pay the chaplain a stipend approved by the bishop.

XXX. The company, out of the moneys to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable, by equal moieties, on the twenty-fifth day of *March* and the twenty-ninth day of *September* in each year; and if any chaplain die, resign, or be removed or appointed, in the interval between the half-yearly days of payment, the company shall pay to him, or his executors or administrators, a part only of the half-yearly payment of the stipend proportioned to the time during which he shall have been the chaplain since the last preceding day of payment.

Stipend to be recovered by action at law.

XXXI. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain, for the space of thirty days next after any of the days of payment whereon the same ought to be paid, such chaplain, or his executors or administrators, may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any court of competent jurisdiction.

Burials in the consecrated portion to be registered by the chaplain.

XXXII. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in *England* (*a*); and such register

(*a*) That is, under 52 Geo. 3, c. 146. See *Glen's Burial Acts*, p. 100.

books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parish within his diocese.

Registers to be subject to the regulations of 6 & 7 Will. 4, c. 86, as to searches, &c.

XXXIII. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of the reign of His late Majesty, intituled *An Act for registering Births, Deaths, and Marriages in* England, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Clerk appointed for the consecrated part of the cemetery.

XXXIV. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the moneys to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

As to burial of persons not members of the Church of England.

XXXV. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried there, under such regulations as the company appoint.

Company may allow any burial service to be performed in Dissenting chapels.

XXXVI. The company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorized by law to officiate in such church or congregation, or recognized as such by the religious community or society to which he belongs.

Power to appoint gravediggers, &c.

XXXVII. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the moneys to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure.

Regulations for ensuring decency and solemnity.

XXXVIII. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

XXXIX. No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery may be set

XL. The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein,

Appndx.

and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

apart for exclusive burial.

Monumental inscriptions.

Plan and book of reference to be kept, and be open to inspection.

XLI. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Form of grant of burial in vault, &c., to be according to schedule.

XLII. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the Form in the Schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them.

Register of grants to be kept.

XLIII. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company.

Rights of burial, &c., to be assignable, or may be bequeathed by will.

XLIV. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.

Form of assignment.

XLV. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the Form in the Schedule to this Act annexed, or to the like effect.

Assignments to be registered.

XLVI. Every such assignment shall, within six months after the execution thereof, if executed in *Great Britain* or *Ireland*, or within six months after the arrival thereof in *Great Britain* or *Ireland*, if executed

elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial no right of burial shall be acquired under any such memorial; and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Probates of wills to be registered.

XLVII. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant, and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed, two shillings and sixpence.

Vaults to be kept exclusively for purchasers of exclusive right.

XLVIII. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

No such grant to give the right of burial in consecrated ground to certain persons.

XLIX. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

Power to remove monuments improperly erected.

L. The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority.

Bishop to have power to object to monumental inscriptions in consecrated part of cemetery.

LI. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows:

Payments to incumbents of parishes from which bodies are brought.

LII. The company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial such sums, if any, as shall be prescribed for that purpose in the special Act.

Appndx.

Company shall keep accounts of interments.

LIII. For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts aforesaid, the company shall cause books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery (distinguishing whether in a place of exclusive burial or otherwise), with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

Account of payments due to incumbents of parishes to be rendered half-yearly.

LIV. The company shall on the twenty-fifth day of *March*, and twenty-ninth day of *September* in each year, or within one month after each of the said days, deliver to the person who is the incumbent of any parish or ecclesiastical district on that day or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half year next preceding the said twenty-fifth day of *March* or twenty-ninth day of *September*, as the case may be.

Fees to be paid to incumbents of parishes half-yearly.

LV. The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of *March* and the twenty-ninth day of *September*, or within one month afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of *March* and twenty-ninth day of *September* respectively, or the executors or administrators of such incumbents; (that is to say), such sums as accrue between the twenty-ninth day of *September* and the twenty-fifth day of *March* following shall be paid to the person who is the incumbent on the twenty-fifth day of *March*, and such sums as accrue between the twenty-fifth day of *March* and the twenty-ninth day of *September* following shall be paid to the person who is the incumbent on the twenty-ninth day of *September;* and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs, by action of debt or on the case, in any court having competent jurisdiction.

Payment to be made to the incumbent for the time being, who is to account with his predecessor.

LVI. If any incumbent of any parish or district in respect of which sums are payable by the company by virtue of the special Act ceases to be incumbent, by cession, death, or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent, and the incumbent of any parish or district who receives from the company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the company shall not be answerable to any person,

other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act. **Appndx.**

Company to pay parish clerks the compensation mentioned.

LVII. The company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes for the relief of the poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

And with respect to the protection of the cemetery, be it enacted as follows:

Penalty for damaging the cemetery.

LVIII. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty on persons committing nuisances in the cemetery.

LIX. Every person who shall play at any game or sport, or discharge firearms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c., and be open to inspection.

LX. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all moneys levied by virtue of this or the special Act for the year ending on the thirty-first day of *December*, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds.

Tender of amends.

LXI. And with respect to the tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such

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tender have been made, the defendant, by leave of the court where such action is pending, may at any time before issue joined pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

8 & 9 Vict. c. 20, incorporated as to damages, &c.

LXII. The clauses of the Railways Clauses Consolidation Act, 1845 (*a*), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively (*b*).

* * * * *

All things required to be done by two justices may in certain cases, be done by one.

LXIV. All things herein or in the special Act, or any Act incorporated therewith, authorized or required to be done by two justices may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

Persons giving false evidence liable to penalties of perjury.

LXV. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to affording access to the special Act, be it enacted as follows:

Copies of special Act to be kept by company at their office, and deposited with the clerk of the peace, and be open to inspection.

LXVI. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive and he and the company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled *An Act to compel Clerks of the Peace for Counties and other Persons to take the custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.*

7 Will. 4, & 1 Vict. c. 83.

(*a*) *Ante*, p. 549.

(*b*) Section 63 was repealed by the Statute Law Revision Act, 1875.

LXVII. If the company fail to keep or deposit any of the said copies of the special Act as hereinbefore mentioned they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on company failing to keep or deposit such copies.

LXVIII. And be it enacted, that nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament. Company not exempt from provisions of any future general Act.

* * * * *

SCHEDULES to which the foregoing Act refers.

Form of Grant of Right of Burial.

By virtue of [*here name the special Act*] we [*here state the name or description of the company*], in consideration of the sum of to us paid by of do hereby grant unto the said the exclusive right of burial [*or* the right of burying bodies, *as the case may be*] [*or* the right of placing a monument, tablet, or gravestone] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add,* "numbered on the plan of the cemetery made in pursuance of the said Act"], to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal [*or* under our hands and seals, *as the case may be*] this day of in the year of our Lord .

Form of Assignment of Right of Burial.

I *A. B.* of in consideration of the sum of paid to me by *C. D.* of do hereby assign unto the said *C. D.* the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or* unto *A. B.* of] in perpetuity [*or as the case may be*] by [*here state the name of the company*] by a deed of grant bearing date the day of and all my estate, title, and interest therein, to hold the same unto the said *C. D.* in perpetuity [*or, as the case may be,* for the remainder of the period for which the same was granted by the said company], subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal this day of .

THE TOWNS POLICE CLAUSES ACT, 1847.

(10 & 11 Vict. Cap. 89) (*a*).

An Act for consolidating in One Act certain provisions usually contained in Acts for regulating the Police of Towns. [22nd July, 1847.]

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WHEREAS it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament for regulating the police of towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such towns or districts, as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such towns or districts in *England* or *Ireland* as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act and be construed therewith as forming one Act.

Extent of Act.

Interpretations in this Act:

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows:

"the special Act;"

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district defined or comprised therein and with which this Act shall be incorporated; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

"prescribed;"

"the commissioners."

Interpretations in this and the special Act:

III. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby

(*a*) For the incorporation of this Act with the Public Health Act, 1875, see section 171 of that Act, *ante*, p. 196.

assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,) Appndx.

Words importing, the singular number shall include the plural number, and words importing the plural number shall include the singular number : Number ;

Words importing the masculine gender shall include females : Gender ;

The word "person" shall include a corporation, whether aggregate or sole : "Person ;"

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure : "Lands ;"

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare or public passage within the limits of the special Act : "Street ;"

The word "month" shall mean calendar month : "Month ;"

The expression "superior courts" shall mean Her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster* and the Court of Common Pleas of the County of *Durham* : "Superior Courts ;"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath : "Oath ;"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town : "County ;"

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice arises ; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together : "Justice ;" "Two justices ;"

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined, shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace : "Quarter sessions ;"

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine. "Cattle."

And with respect to citing this Act, or any part thereof, be it enacted as follows :

IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "the Towns Police Clauses Act, 1847." Short title of the Act.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, Form in which portions of this Act may be incorporated with other Acts.

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shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

And with respect to obstructions and nuisances in the streets, be it enacted as follows (*a*):

Power to prevent obstructions in the streets during public processions, &c.

XXI. The commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed (*b*), and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Power to regulate the route of persons driving stage carriages, &c., during divine service.

XXII. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on *Sunday*, *Christmas Day*, *Good Friday*, or any day appointed for a public fast or thanksgiving, and any orders so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Proprietors of stage carriages deviating from route by order free from penalty.

XXIII. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his license which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners (*c*).

Power to impound stray cattle.

XXIV. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any

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(*a*) It is to be observed that many of the offences mentioned in the following sections are punishable under the provisions of the Highway Acts and the Vagrant Act, which should therefore be referred to in further illustration of the meaning of these sections.

(*b*) See the qualifications in section 28, *post*, and *Fox* v. *Palmer*, 22 J. P. 449, in regard to an obstruction by running horses in the access to a market.

(*c*) As no stage carriages are now licensed under the general law, this section is now inoperative.

common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle (*d*).

Power to sell stray cattle for penalty and expenses.

XXV. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days notice thereof shall be given to or left at the dwelling house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Persons guilty of pound-breach to be committed for three months.

XXVI. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months.

Power to provide a pound.

XXVII. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and, such pound when made shall be kept in repair by the commissioners.

Penalty on persons committing any of the offences herein named.

XXVIII. Every person who in any street (*e*), to the obstruction, annoyance, or danger of the residents or passengers (*f*), commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable (*g*) or other officer

(*d*) The 12 & 13 Vict. c. 92, and 17 & 18 Vict. c. 60, require that persons impounding animals shall supply them with a sufficient quantity of fit and proper food, and may recover the cost from the owner, or may sell them to recompense themselves the cost paying the overplus, if any, to the owner. But these Acts do not apply to the keeper of the pound. *Dargan* v. *Davies*, 41 J. P. 468.

(*e*) See the definition in section 3, *ante*, p. 631, and compare the definition in the Public Health Act, 1875, s. 4, *ante*, p. 9.

(*f*) These words govern the whole of the section. *Stinson* v. *Browning*, 35 L. J. M. C. 152. But in proceedings for an offence it is not necessary to call persons who have been actually annoyed, &c. *Wooley* v. *Corbishley*, 24 J. P. 773; *Reed* v. *Perrett*, *ante*, p. 607.

(*g*) This term includes any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority: Public Health Act, 1875, s. 171, *ante*, p. 196. Query, whether the police who arrest an offender against this section require an authority to prosecute under section 253 of the Public Health Act, *ante*, p. 292. See 46 J. P. 237.

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appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence ; (that is to say,)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains or breaks, or turns loose any horse or animal (*a*), or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary) :

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal (*b*) :

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state :

Every person, who after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice :

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot :

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care :

(*a*) The owner of land adjoining a highway claiming the herbage on the side of the latter put his cattle thereon, and it was held that this was not turning an animal loose thereon. As to animals straying on highways, *Sherborn* v. *Wells*, 3 B. & S. 784 ; 9 Jur. (N.S.) 1104 ; 32 L. J. M. C. 179 ; 8 L. T. (N.S.) 274 ; 11 W. R. 594 ; 27 J. P. 566. See also the provisions of the Highway Acts as to animals straying upon highways, 5 & 6 Will. 4, c. 50, s. 74, and 27 & 28 Vict. c. 101, s. 25, and the cases decided on these sections ; *Morris* v. *Jeffries*, L. R. 1 Q. B. 261 ; 35 L. J. M. C. 143 ; *Lawrence* v. *King*, L. R. 3 Q. B. 345 ; *Golding* v. *Stocking*, L. R. 4 Q. B. 516 ; 33 J. P. 278 ; *Bothamley* v. *Danby*, 24 L. T. (N.S.) 656.

(*b*) See also 34 & 35 Vict. c. 56, as to dogs at large in the streets. As to the proof of *scienter*, see *Worth* v. *Gilling*, L. R. 2 C. P. 1 ; *Baldwin* v. *Cassella*, L. R. 7 Ex. 325 ; *Applebee* v. *Percy*, L. R. 9 C. P. 647 ; 38 J. P. 567.

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Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle (*c*) :

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare (*d*):

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway:

Every person who places or leaves any furniture, goods, wares, or merchandize, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any

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(*c*) See also 24 & 25 Vict. c. 100, s. 35. A bicycle is a carriage within this provision. *Taylor* v. *Goodwin*, 4 Q. B. D. 228; 48 L. J. M. C. 104; 40 L. T. (N.S.) 458; 27 W. R. 489; 43 J. P. 653. Note that this clause, unlike 5 & 6 Will. 4, c. 50, s. 78, includes riding as well as driving furiously. See *Williams* v. *Evans*, 1 Ex. D. 277; 41 J. P. 151.

(*d*) A person who had a caravan for the sale of goods stationed it in a market place near what was described as a footpath, over which a crowd collected and obstructed the passage. Held that he was not guilty of an offence against this clause. *Ball* v. *Ward*, 33 L. T. (N.S.) 170; 40 J. P. 213. An obstruction is not caused by persons stopping and talking in the street, unless it is done wilfully and pertinaciously. *Wemyss* v. *Black*, 8 Sc. Session Cases (Justiciary), 4th series, 25. An indictable obstruction may be caused by attracting a crowd by means of pictures, &c., in shop windows. *Reg.* v. *Carlile*, 6 C. & P 636, and see 46 J. P. 19. This clause will not apply to a place like a mews which is not a street, and is only dedicated to the public subject to certain restrictions arising from its use. *Vestry of Chelsea* v. *Stoddard*, 43 J. P. 782. The cases decided with reference to the Highway Act, 5 & 6 Will. 4, c. 50, s. 72, should be referred to in illustration of this clause. As to claims to erect booths, &c., on highways during a fair, see *Simpson* v. *Wells*, 26 L. T. (N.S.) 163 : a claim by an innkeeper to allow his guest's carriage to remain in the highway, *Gerring* v. *Barfield*, 28 J. P. 615 : holding a fair on a highway, *Elwood* v. *Bullock*, 6 Q. B. 383; *Reg.* v. *Smith*, 4 Esp. 109. To allow trees to grow over a highway is not a wilful obstruction : *Walker* v. *Horner*, 1 Q. B. D. 4; 39 J. P. 773. But any unreasonable and unnecessary use of a highway is an obstruction, *e.g.*, leaving a horse-van and ploughing gear standing by the side of a highway, *Harris* v. *Mobbs*, 3 Ex. D. 268; or leaving a roller so as to frighten horses, *Wilkins* v. *Day*, 12 Q. B. D. 110.

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footway (*a*), or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandize, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway (*b*) :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution :

Every person who wilfully and indecently exposes his person :

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language (*c*) :

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework (*d*) :

Every person who wilfully and *wantonly* disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door (*e*), or who wilfully and unlawfully extinguishes the light of any lamp :

(*a*) There is sometimes a strip of land between the footway and the carriage way which is not dedicated to the public as part of the street. This clause would not affect the right to place goods, &c., upon it. See *Le Neve* v. *Vestry of Mile End Old Town, ante*, p. 9. But in general, if a person asserts the right to obstruct the way by virtue of a qualified dedication he must prove it. See *Spice* v. *Peacock*, 39 J. P. 581 ; *Whittaker* v. *Rhodes*, 46 J. P. 182. But in such cases it is for the justices to determine whether or not the place is a street. *Reg.* v. *Young*, 52 L. J. M. C. 55 ; 47 J. P. 519. As to projections causing inconvenience to passengers, see the Towns Improvement Clauses Act, 1847, section 69, *ante*, p. 607.

(*b*) As to the right of the occupier of premises to have free access to the highway for his goods, even though in taking these across the footway he injures it, see *St. Mary, Newington (Vestry of)* v. *Jacobs*, L. R. 7 Q. B. 47 ; 41 L. J. M. C. 72 ; 25 L. T. (N.S.) 800 ; 20 W. R. 249 ; 36 J. P. 119. See also *Le Neve* v. *Mile End Old Town, supra.*

(*c*) Compare the provisions of the Vagrant Act, 5 Geo. 4, c. 83, ss. 3, 4. The 20 & 21 Vict. c. 83, contains other provisions to prevent the sale of obscene books, pictures, prints, and other articles. See *Reg.* v. *Hicklin*, L. R. 3 Q. B. 360 ; *Steele* v. *Brannan*, L. R. 7 C. P. 264 ; *Scott* v. *Wolverhampton*, 32 J. P. 533, as to what are obscene books, &c.

(*d*) This is practically abrogated as to fireworks by 38 & 39 Vict. c. 17, s. 80.

(*e*) The mere fact of a man being instructed to deliver papers at a house is no answer to a complaint under this clause if the ringing, &c., is violent and at an unreasonable hour of the night. *Clarke* v. *Hoggins*, 11 C. B. (N.S.) 545.

Every person who flies any kites, or who makes or uses any slide upon ice or snow:

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime:

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) (*f*):

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning):

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger:

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story:

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto:

Every person who throws or lays any dirt, litter, or ashes, or night-soil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street (*g*): Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases:

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance (*h*):

Penalty on drunken persons, &c. guilty of riotous or indecent behaviour.

XXIX. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any

(*f*) A claim of right does not necessarily oust jurisdiction under this section, for the court has to decide as a fact whether the place is a street. *Reg.* v. *Young*, *ante*, p. 636.

(*g*) This must be within the district of the local board. See *Flight* v. *Clarke*, 13 M. & W. 155.

(*h*) See also the Public Health Act, 1875, sections 44 and 47, *ante*, pp. 56, 58.

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violent or indecent behaviour in any police office or any police station-house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (*a*).

And with respect to fires, be it enacted as follows :

Penalty for setting chimneys wilfully on fire.

XXX. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding five pounds : Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for accidentally allowing chimneys to catch fire.

XXXI. If any chimney accidentally catch or be on fire within the said limits the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings : Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant.

Fire engines and firemen may be provided by the commissioners.

XXXII. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire, as they think fit.

Fire police permitted to go beyond the limits of the Act in certain cases.

XXXIII. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits ; and the owner (*b*) of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen (*c*) ; and in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the

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(*a*) Where a charge is made under this clause, and the justices do not find that the defendant has been guilty of riotous conduct in a street, they cannot convict of simple drunkenness. *Martin* v. *Pridgeon*, 1 E. & E. 778 ; 28 L. J. M. C. 179. See also the Licensing Act, 1872, section 12.

(*b*) The owner of a stack of hay standing on ground which he *occupied* was held to be within these words. *Lewis* v. *Arnold*, L. R. 10 Q. B. 245 ; 44 L. J. M. C. 68 ; 39 J. P. 294, 519.

(*c*) This provision impliedly negatives the right to charge for engines and apparatus when employed within the district. *Drightlington Local Board* v. *Bower*, 22 W. R. 165 ; 38 J. P. 73.

said engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

And with respect to places of public resort, be it enacted as follows (*d*):

Penalty on victuallers harbouring constables while on duty.

XXXIV. Every victualler or keeper of any public house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding twenty shillings (*e*).

Penalty on coffee shop keepers harbouring disorderly persons.

XXXV. Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty not exceeding five pounds (*f*).

Penalty on persons keeping places for bear-baiting, cock-fighting, &c.

XXXVI. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animal shall be liable to a penalty of not more than five pounds, or, in the discretion

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(*d*) Reference may be made to the provisions of 23 & 24 Vict. c. 27, as to refreshment houses, and of the Licensing Acts as to the prevention of offences against public order by drunkenness in the highways and disorderly conduct in licensed houses; also to 8 & 9 Vict. c. 109, and the Licensing Act, 1872, section 75, as to public billiard rooms; to 8 & 9 Vict. c. 109, and 16 & 17 Vict. c. 119, as to gaming and betting houses (as to the latter Act, see *Bows* v. *Fenwick*, L. R. 9 C. P. 339; *Haigh* v. *Corporation of Sheffield*, 44 L. J. M. C. 17; 39 J. P. 230; *Galloway* v. *Maries*, 8 Q. B. D. 275; 46 J. P. 326; *Eastwood* v. *Miller*, L. R. 9 Q. B. 440; *Oldham* v. *Ramsden*, 32 L. T. (N.S.) 825; *Reg.* v. *Cook*, 48 J. P. 337); to 36 & 37 Vict. c. 38, as to betting and gaming in the streets (upon this Act see *Tollett* v. *Thomas*, L. R. 6 Q. B. 514; *Langrish* v. *Archer*, 10 Q. B. D. 44; 47 J. P. 295.

(*e*) A similar clause is contained in the Licensing Act, 1872, section 16, as to which see *Mullins* v. *Collins*, L. R. 9 Q. B. 292; 38 J. P. 629.

(*f*) The keeper of a licensed alehouse is not exempt from the operation of this clause. *Cole* v. *Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125. It is not unlawful to supply prostitutes, &c., with refreshments, nor does the mere doing so amount to permitting them to assemble. See *Greig* v. *Bendeno*, E. B. & E. 133; 27 L. J. M. C. 294; *Perkis* v. *Huxtable*, 1 E. & E. 780; 28 L. J. M. C. 221; *Whitfield* v. *Bainbridge*, 30 J. P. 308; *Parker* v. *Green*, 2 B. & S. 299; *Belasco* v. *Hannant*, 3 B. & S. 13; *Wilson* v. *Stewart*, ib. 913; *Cole* v. *Coulton*, *supra*. A meeting to get up a subscription for a convicted thief's family, several thieves being in the company, is an assembly of thieves such as is forbidden by the Licensing Act, 1872, section 14, and presumably by this section. *Marshall* v. *Fox*, L. R. 6 Q. B. 370; 40 L. J. M. C. 142; 24 L. T. (N.S.) 751.

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of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing authorize the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding five shillings, and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned (*a*).

And with respect to hackney carriages, be it enacted as follows:

Hackney carriages to be licensed.

XXXVII. The commissioners may from time to time license (*b*) to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers (which in that case shall be deemed the prescribed distance), such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

What to be hackney carriages.

XXXVIII. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance (*c*), and every carriage standing upon any street

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(*a*) See also 12 & 13 Vict. c. 92, s. 3, and *Pitts* v. *Millar*, L. R. 9 Q. B. 380, decided upon that section.

(*b*) The possession of a revenue license to let horses and carriages under 2 & 3 Will. 4, c. 120, was held not to supersede the necessity of the proprietor of a hackney carriage having a license under this Act. *Buckle* v. *Wrightson*, 5 B. & S. 854; 34 L. J. M. C. 43; 11 L. T. (N.S.) 341; 11 Jur. (N.S.) 281.

(*c*) A hackney carriage while on the premises of a railway company by their leave for the accommodation of passengers by their trains is not plying for hire *in a street*; the stations are private property. *Case* v. *Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113; and see *Hole* v. *Digby*, 27 W. R. 884. But the dictum of KELLY, C. B., in that case, that they were not then *plying for hire* in that they were not at the disposal of the public, was not followed in *Clarke* v. *Stanford*, L. R. 6 Q. B. 357; 40 L. J. M. C. 151; and in *Allen* v. *Tunbridge*, L. R. 6 C. P. 481; 40 L. J. M. C. 197, it was held that a brougham, the owner of which, by agreement with a railway company, attended at their station to await the arrival of trains for the conveyance of any passenger who chose to have it, and whose driver solicited passengers, was a hackney carriage, *plying for hire*. And see *Foinett* v. *Clark*, 41 J. P. 359. Plying for hire in an open unenclosed piece of private ground to which the public have access, but over which there is no public right of way, is not plying for hire in a *street*. *Skinner* v. *Usher*, L. R. 7 Q. B. 423; 41 L. J. M. C. 158. A piece of ground adjoining a railway station, and belonging to the company, metalled and separated from the street only by a gutter, was used as an approach to the station. Private carriages were allowed to stand there, but no hackney carriages, except those of the appellant, who had, by agreement with the company, the sole right of standing carriages there. It was held that the plying for hire there was not plying for hire in a street. *Curtis* v. *Embery*, L. R. 7 Ex. 369; 42 L. J. M. C. 39. In the city of E. was a square in front of an hotel, unenclosed, and where the public could pass freely, except when the hotel keeper's carriages stood there. The square was let with the hotel, and was used for the hotel cabs when plying for hire. It was held that the square was part of the street. *Marks* v. *Ford*, 45 J. P. 157.

within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act (*d*); and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act (*e*).

Fee to be paid for license.

XXXIX. For every such license there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings.

Persons applying for license to sign a requisition for same.

XL. Before any such license is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such license is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such license, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage; and any person who, on applying for such license, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

What shall be specified in the license.

XLI. In every such license shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such license is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such license, which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Licenses to be registered.

XLII. Every license shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that

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(*d*) As to what is a hackney carriage apart from any statutory definition, see *Bateson* v. *Ody*, 43 L. J. M. C. 131; 30 L. T. (N.S.) 712.

(*e*) This proviso was held to apply to an omnibus. *Stockbridge* v. *Cousin*, 30 J. P. 166. The license here referred to was an excise license, now abolished by 32 & 33 Vict. c. 14. But though no license can now be obtained the law officers of the Crown have advised that the exemption remains.

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purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

License to be in force for one year only.

XLIII. Every license so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated, shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such license, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

Notice to be given by proprietors of hackney carriages of any change of abode.

XLIV. So often as any person named in any such license as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode ; and he shall at the same time produce such license at the office of the commissioners, who shall, by their clerk, or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change ; and any person named in any such license as aforesaid as the proprietor, or one of the proprietors, of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such license in order that such memorandum as aforesaid may be endorsed thereon within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

Penalty for plying for hire without a license.

XLV. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a license as aforesaid for such carriage, or during the time that such license is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance, for which such license as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the license openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

Drivers not to act without first obtaining a license.

XLVI. No person shall act as driver of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a license from the commissioners, which license shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same ; and every such license shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned (*a*).

Penalty on drivers act-

XLVII. If any person acts as such driver as aforesaid without having obtained such license, or during the time that his license is suspended,

(*a*) The license of the driver is only to be in force for one year. See the Public Health Act, 1875, s. 171, *ante*, p. 196.

or if he lend or part with his license, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such license, or during the time that his license is suspended, as hereinafter provided, every such driver and every such proprietor shall, for every such offence, respectively be liable to a penalty not exceeding twenty shillings.

Driving without license.

XLVIII. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the license of such driver while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the license of such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the license of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him and to retain in his possession the license of any driver while such driver remains in his employ, or if he refuse or neglect to produce such license as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Proprietor to retain license of drivers when in his employ, and to produce the same when summoned.

Justices may endorse convictions upon licenses.

Penalty on proprietors for neglect.

XLIX. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct such proprietor shall forthwith return to such driver the license belonging to him; but if such driver have been guilty of any misconduct, the proprietor shall not return his license, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint, and if upon inquiry it appear that the license of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such license, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

Proprietor to return license to drivers when quitting his service if they behave well; if otherwise, proprietors to summon them.

Compensation in case of license being improperly withheld.

L. The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend or revoke, as they deem right, the license of any such proprietor or driver.

Licenses to be suspended or revoked for misconduct.

LI. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry Persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth; and the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

Number of persons to be carried in a hackney carriage to be painted thereon.

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Penalty for neglect or for refusal to carry the prescribed number.

LII. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding forty shillings.

Penalty on driver for refusing to drive.

LIII. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse (*a*), to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-law of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such hackney carriage, shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty for demanding more than the sum agreed for, though less than the legal fare.

LIV. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any bye-law made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.

Agreement to pay more than the legal fare not to be binding, and sum paid beyond the proper fare may be recovered back.

LV. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any bye-law made under this or the special Act, shall be binding on the person making the same, and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid, and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of forty shillings, and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Driver to carry, under an agreement for a discretionary distance, the distance to which

LVI. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty

(*a*) The driver may refuse to carry persons suffering from infectious disease. See the Public Health Act, 1875, s. 127, *ante*, p. 127.

shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any bye-law made in pursuance thereof.

hirer is entitled for the fare.

LVII. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the bye-laws, then the sum of one shilling and sixpence for every half hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away, or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made; or if such driver on the final discharge of such hackney carriage refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding forty shillings.

Deposit to be made for carriages waiting.

Penalty on the driver refusing to wait, or to account for the deposit.

LVIII. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorized by any bye-law made under this or the special Act shall be liable to a penalty not exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, whose evidence shall be admissible in proof of the said offence.

Overcharge by hackney coachmen, &c., to be included in conviction, and returned to aggrieved party.

LIX. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings.

Penalty for permitting persons to ride without consent of the hirer.

LX. No person authorized by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof, and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor, and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

No person to act as driver of any carriage without the consent of the proprietor.

LXI. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton or furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding five pounds, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months.

Penalty on drivers misbehaving.

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Penalty for having carriages unattended at places of public resort.

LXII. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence, and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justices as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Damage done by driver may be recovered from the proprietor.

LXIII. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages (*a*).

Improperly standing with carriage; refusing to give way to or obstructing any other driver; or depriving him of his fare.

LXIV. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

LXV. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any bye-law made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable, and in default of payment of such compensation, the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

(*a*) Compensation accepted under this section is a bar to a subsequent action for the same damage. See *Wright* v. *London General Omnibus Company*, 2 Q. B. D. 271.

LXVI. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty. Penalty for refusing to pay the fare.

LXVII. Any person using any hackney carriage plying under a license granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding five pounds, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty. Penalty for damaging carriage.

LXVIII. The commissioners may from time to time (subject to the restrictions of this and the special Act) make bye-laws for all or any of the purposes following; (that is to say,) (*b*). Commissioners may make bye-laws for regulating hackney carriages.

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments (*c*) and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

For regulating the manner in which the number of each carriage, corresponding with the number of its license, shall be displayed:

For regulating the number of persons to be carried by such hackney carriage, and in what manner such number is to be shown on such carriages, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

And with respect to public bathing be it enacted as follows:

LXIX. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the Bathing machines.

(*b*) Model bye-laws have been issued by the Local Government Board under this section. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 468.

(*c*) A bye-law prohibiting the plying for hire in any street or place within the district was held to be valid, though the actual locality of the stand was not set out in it. A driver on the sea beach passed a stand, and then got off his carriage and took up a fare, and it was held that he had been properly convicted of a breach of the bye-law. *Blackpool Local Board* v. *Bennett*, 4 H. & N. 127; 28 L. J. M. C. 203.

Appndx. commissioners may make bye-laws for the following purposes ; (*a*) that is to say,)

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe:

For preventing any indecent exposure of the persons of the bathers:

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same:

For regulating the distance at which boats or vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

* * * * *

THE POOR LAW AUDIT ACT, 1848.

(11 & 12 Vict. Cap. 91) (*b*).

An Act to make Provision for the Payment of Parish Debts, the Audit of Parochial and Union Accounts, and the Allowance of certain Charges therein. [31st August, 1848.]

* * * * *

Appeal against disallowances and surcharges may be determined by the Poor Law Board on the merits, and such disallowances, &c., may be remitted in certain cases.

IV. And be it enacted, that where any appeal shall be made to the said commissioners (*c*) against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, *by an order under their seal* (*d*), direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

(*a*) Model bye-laws have been issued under this section. As to the confirmation of these bye-laws, see 47 Vict. c. 12, *ante*, p. 468. The license of the local board to use a bathing machine gives no authority to place the machine on the sea-shore the ownership of which belongs to a private person, without his consent. *Mace* v. *Philcox*, 15 C. B. N. S. 600; 33 L. J. C. P. 124. As to indecent bathing on the sea-shore, see *R.* v. *Crunden*, 2 Camp. 89; *R.* v. *Reed*, 12 Cox C. C. 1.

(*b*) This is one of the Poor Law Audit Acts incorporated with the Public Health Act, 1875, ss. 247, 248, *ante*, pp. 282–287. See also 7 & 8 Vict. c. 101, *ante*, p. 488, and 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113; 42 Vict. c. 6, *post*.

(*c*) Now the Local Government Board; see the note to 7 & 8 Vict. c. 101, s. 36, *ante*, p. 491.

(*d*) The words in italics were repealed by 29 & 30 Vict. c. 113, s. 5, *post*.

V. And whereas doubts exist as to the powers and duties of auditors in certifying the sums due from the overseers and other officers, and it is desirable to remove such doubts: Be it therefore enacted, that where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient: Provided always, that where the sum, or the aggregate of the sums disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

Mode of certifying as to balances to officers.

* * * * *

VII. And be it enacted, that, in addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or, in the case of a parish not comprised in a union, wherein such parish shall be situated, a reasonable time prior to the holding of his audit; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit; and, except where a party, not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of any such adjourned audit was given.

Notice of audit to be advertised.

VIII. And be it enacted, that if an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case.

As to proceedings necessary to be taken against persons now liable to be surcharged by auditor, and to whom no notice is required to be given.

IX. And be it enacted, that in any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of

What shall be required to be proved

Appndx.

by auditors in order to recover sums certified by them to be due.

his appointment under the seal of the Poor Law Commissioners, or of the commissioners aforesaid, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing, purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information (*a*).

* * * * *

SCHEDULE to which this Act refers.

FORMS OF CERTIFICATES.

1. *Against an Accounting Officer.*

I do hereby certify, that in the account of *A. B.*, the [*set out the name of the office*] of the Parish of [*or* of the Union], I have disallowed [*or* surcharged] the sum of .

As witness my hand, this day of , 1848.

M. N., Auditor of the District, which comprises the above-named Parish or Union.

2. *Against a Person not an Accounting Officer.*

I do hereby certify, that in the accounts of the Union [*or* of the Parish of] I have disallowed the sum of £ as a payment illegally made out of the funds of such union [*or* parish], and I find that *C. D.*, of , authorized the making of such illegal payment, and I do hereby surcharge the said *C. D.* with the same.

As witness my hand, this day of , 1848.

M. N., Auditor of the District, which comprises the above-named Parish or Union.

(*a*) See the cases cited in the notes to 7 & 8 Vict. c. 101, s. 32, *ante*, p. 488. See also *Reg.* v. *Fordham*, L. R. 8 Q. B. 501, where it was held that the certificate of the treasurer was only *primâ facie* evidence of non-payment, and that it was open to the person surcharged to show what he had paid, if he could do so without contradicting the auditor's certificate.

THE POOR LAW UNION CHARGES ACT AMENDMENT ACT, 1849.

(12 & 13 Vict. Cap. 103) (*b*).

An Act to continue an Act of the last Session of Parliament, for charging the Maintenance of Poor Persons in Unions upon the Common Fund; and to make certain Amendments in the Laws for the Relief of the Poor. [1st August, 1849.]

* * * * *

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Certain limitation in 11 & 12 Vict. c. 43, not to apply to proceedings by auditors.

IX. And whereas in the Act of the last session of Parliament, intituled *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to Summary Convictions and Orders*, it is enacted, that in all cases where no time had then been or should thereafter be specially limited for making the complaints, or laying the informations therein referred to, every such complaint should be made and every such information laid within six calendar months from the time when the matter of such complaint or information respectively arose; and doubts have been entertained whether the provision aforesaid applies to proceedings by auditors to recover sums certified by them to be due in the accounts of officers or other persons, and it is desirable to remove such doubts: Be it therefore declared and enacted, that nothing in the provision of the said Act herein recited shall be deemed to apply to any such proceeding by any auditor, but that no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Poor Law Board, after the lapse of nine calendar months from the determination thereupon (*c*).

* * * * *

Auditors may recover costs of proceedings to enforce due attendance at the audit.

XI. And be it enacted, that where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit, or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the Poor Law Board consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due.

* * * * *

(*b*) The following sections of this Act relate to the audit of accounts, and are incorporated with the Public Health Act, 1875, by sections 247, 248, *ante*, p. 282. See also 7 & 8 Vict. c. 101, and 11 & 12 Vict. c. 91, *ante*; and 29 & 30 Vict. c. 113; and 42 Vict. c. 6, *post*.

(*c*) See upon this clause *Reg.* v. *Tyrwhitt*, 15 Q. B. 249; 4 N. S. C. 266; 19 L. J. M. C. 249; 14 Jur. 1024.

THE LABOURING CLASSES LODGING HOUSES ACT, 1851.

(14 & 15 Vict. Cap. 34) (*a*).

An Act to encourage the Establishment of Lodging Houses for the Labouring Classes. [24th July, 1851.]

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Whereas it is desirable, for the health, comfort, and welfare of the inhabitants of towns and populous districts, to encourage the establishment therein of well-ordered lodging houses for the labouring classes: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Short title of Act.

I. That in citing this Act for any purpose it shall be sufficient to use the expression "The Labouring Classes Lodging Houses Act, 1851."

Act may be adopted in certain boroughs and parishes.

II. That this Act may be adopted for any incorporated borough in *England* regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also for any place being the district of any Local Board of Health regulated under the Public Health Act, 1848, or any Act passed for the amendment thereof, and also for any place being the district within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving of such place, and also, with the approval of one of Her Majesty's principal Secretaries of State, for any parish in *England*, having, according to the then last census, a population of not less than ten thousand, or being a parish in any such incorporated borough, having, according to the then last census, a population of not less than ten thousand, and also with the like approval for each of several parishes as by this Act in that behalf provided (*b*).

Interpretation of terms.

III. That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

"Parish" shall mean every place maintaining its own poor, and having a vestry:

"Borough" shall mean city, borough, port, cinque port, or town corporate:

(*a*) This Act and the Acts amending it are to be executed by the urban authority where the Acts are in force in their district. See the Public Health Act, 1875, section 10, *ante*, p. 22. The amending Acts are the 29 Vict. c. 28, 30 Vict. c. 28, and are set out, *post*. See also the Artizans Dwellings Act, 1868, *post*, and amending Acts.

(*b*) The urban authority are to execute the provisions of this Act if it is in force in their district. See note (*a*), *supra*.

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"District" shall mean any place being the district of such a Local Board of Health, and shall also mean any place being the district within the limits of such an Improvement Act:

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Churchwardens" shall mean also chapelwardens or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry (*c*) elected under an Act passed in the second year of the reign of his late Majesty, intituled *An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of* England *and* Wales, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting, by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry: 1 & 2 Will. 4, c. 60.

"Board" shall mean, as regards the district of such a Local Board of Health, such Local Board of Health for the time being in office and acting as such Local Board of Health, and, as regards the district within the limits of such an Improvement Act, the commissioners, trustees, or other body of persons by whatever name distinguished for the time being in office and acting in the execution of such Act:

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners (*d*):

"Clerk" shall mean, as regards an incorporated borough, the town clerk of such borough, and, as regards a district, the clerk of the board of such district, and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners:

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, district, parish, or place where the matter requiring the cognizance of justices shall arise:

"Improvement rates" shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such Improvement Act shall be applicable for the general purposes of such Act:

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

(*c*) The reference to 59 Geo. 3, c. 12, was repealed by the Statute Law Revision Act, 1875.

(*d*) This term means also the urban authority. See the Public Health Act, 1875, section 316, *ante*, p. 367.

Appndx. IV. (*a*).

V. (*b*). . . . The income arising from the lodging houses in any borough shall be paid to the credit of the borough fund thereof; and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, to be called "The Lodging Houses Account."

Any Local Board of Health may adopt the provisions of this Act if they think fit.

VI. That the board of any such district, being the district of a Local Board of Health, may, if they think fit, determine that this Act shall be adopted for such district, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district and this Act shall be carried into execution in such district, in accordance with such provisions and the laws for the time being in force relating to such board.

On requisition of ratepayers board to postpone proceedings till after next day for election of members of board.

VII. Provided always, that the board shall give not less than twenty-eight nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to a general district rate made by the board, and requesting the board to postpone such consideration until after the then next yearly day for the election of members of the board (*c*), then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board think fit.

Expenses of carrying this Act into execution by Local Board of Health shall be charged on the district fund, and income arising to be carried to the same.

VIII. That the expenses of carrying this Act into execution in any such district, being the district of a Local Board of Health, in which the board shall have resolved to adopt this Act for their district, shall be chargeable upon and paid out of the moneys from time to time carried to the credit of the district fund account of such district, and for that purpose the board may levy with and as part of the general district rate of such district, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the general rate of such district, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the Public Health Act, 1848 (*d*); and the income arising from the lodging houses in any such district shall be paid to the credit of the district fund account thereof; and the board shall keep distinct accounts of their receipts, payments, credits, and liabilities with

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(*a*) Section 4 was repealed by the Statute Law Revision Act, 1875.

(*b*) The first part of section 5 was repealed by the Statute Law Revision Act, 1875.

(*c*) See the Public Health Act, 1875, Sched. II., rr. 36 and 55, *ante*, pp. 401, 405.

(*d*) *i.e.*, the Public Health Act, 1875. See section 313 of that Act, *ante*, p. 366.

reference to the execution of this Act, to be called "The Lodging Houses Account." Appndx.

Any improvement board may adopt the provisions of this Act if they think fit.

IX. That the board of any such district, being the place within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving of such place, may, if they think fit, determine that this Act shall be adopted for such district, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and this Act shall be carried into execution in such district in accordance with such provisions and the laws for the time being in force relating to such board.

On requisition of ratepayers board to postpone proceedings till after next day for election of members of board.

X. Provided always, that the board shall give not less than twenty-eight days nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to an improvement rate made by the board, and requesting the board to postpone such consideration until after the then next yearly or other day for the election or appointment of members of the board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board think fit.

If majority of board not elected by ratepayers, consent of ratepayers to be obtained.

XI. Provided always, that in any case in which the major part in number of the members of the board of any such district are elected or appointed in any manner other than by or with the concurrence of the persons liable to be rated to improvement rates made by the board, the board shall not determine that this Act shall be adopted for the district, except with the sanction of the major part in value of the persons so liable to be present at a meeting specially convened for the purpose by the board, by not less than twenty-eight days nor more than forty-two days public notice of the intention of holding such meeting, and of the time and place for holding the same; and such meeting shall be held at such convenient place within the district, and at such convenient time, as the board may think fit; and the procedure thereat shall be regulated by the board.

Expenses of carrying this Act into execution by improvement commissioners shall be charged on general improvement rate, and income arising to be carried to the same.

XII. That the expenses of carrying this Act into execution in any such district, being the place within the limits of any such improvement Act in which the board shall have resolved to adopt this Act for their district, shall be chargeable upon and paid out of the improvement rate of such district, and for that purpose the board may levy with and as part of such improvement rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as such improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expenses of carrying this Act into execution were an expense necessarily incurred in carrying into effect the general provisions of such Improvement Act; and the income arising from the lodging houses in any such district shall be paid to the credit of the improvement rate thereof; and the board shall keep distinct

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accounts of their receipts, payments, credits, and liabilities with reference to the execution of this act, to be called "The Lodging Houses Account."

Auditing accounts of improvement commissioners with respect to Act.

XIII. That in every case in which any such Improvement Act contains provisions for the auditing of accounts thereunder, the accounts of the board with respect to this Act shall be audited in accordance with those provisions (*a*); and in every case in which any such Improvement Act does not contain any such provisions, the accounts of the board with respect to this Act shall be audited yearly by the poor law auditor within whose district the district of the board lies; and the board shall produce to him their accounts, with sufficient vouchers for all moneys received and paid, and he shall examine such accounts and vouchers, and report thereon to the board, and every such report shall be open at all reasonable times without charge to the inspection of every person liable to be rated to an improvement rate made by the board.

On the requisition of ten ratepayers, churchwardens, &c. to convene vestry meeting, to determine whether this Act shall be adopted.

If vestry resolve to adopt the Act, a copy of resolution to be sent to Secretary of State, &c.

Resolution not deemed to be carried unless two-thirds vote for it.

XIV. That upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, the churchwardens or other persons to whom it belongs to convene a meeting of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given, in each of three successive weeks before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries of State, for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that such resolution of the vestry shall not be deemed to be carried unless at least two-thirds in value of the votes given on the question, according to the usual manner of voting at such vestry, shall have been given for such resolution.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

XV. That in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly (the year being reckoned from and exclusive of the day of the first appointment of commissioners), but shall be eligible for immediate re-appointment.

Resignation of commissioners.

XVI. That any commissioner may at any time resign his office as a commissioner, on giving seven days notice in writing of his intention to resign, to the clerk, and also to the churchwardens.

Vacancies to be filled up by vestry.

XVII. That any vacancies in the commissionership may be filled up by the vestry, when and as the vestry shall think fit, but at the latest at the then next yearly meeting for the appointment of commissioners.

(*a*) But see now the last clause of section 247 of the Public Health Act, 1875, *ante* p. 284.

XVIII. That the commissioners shall meet at least once in every calendar month, and at such other times as they think fit, at their office, or some other convenient place, public notice of the times and place of meeting being previously given. Meetings of the commissioners.

XIX. That it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose therein named, and to meet at such time as shall be therein named; and the commissioners may meet accordingly without further notice. Special meetings of commissioners.

XX. That at all meetings of the commissioners any number, not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed, then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners. Quorum of meetings of commissioners.

XXI. That the commissioners, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for a clerk and such other officers and servants as shall be necessary for the purposes of this Act, and shall appoint and may remove at pleasure such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office. Commissioners may appoint and remove officers, &c.

XXII. That all orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings, so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever. Minutes of proceedings of commissioners to be entered in books.

XXIII. That the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants, having the custody of such books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds. Commissioners to keep accounts, which shall be open to inspection. Penalty for refusing to allow inspection.

XXIV. That the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners; and Auditors to be appointed

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yearly, who shall examine the accounts and report to vestries.

at such time in the month of *March* in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid; and the auditors shall examine such accounts and vouchers, and report thereon to the vestry: Provided always, that if the general accounts of the parish be audited by a poor law auditor, the accounts of the commissioners shall be audited by such poor law auditor.

Expenses of executing Act in any parish to be paid out of the poor's rate.

XXV. That the expenses of carrying this Act into execution in any parish to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish; provided always, that the vestry shall be convened in the manner usual in the parish, and the amount for the time being proposed to be raised or applied for such expenses shall be expressed in the notice convening the vestry.

Overseers to levy as part of the poor's rate such sums as vestry shall deem necessary to pay expenses.

XXVI. That for defraying the expenses so sanctioned the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts: Provided always, that in the notices requiring the payment of the rate the proportion which the amount to be thereby raised for the purposes of this Act shall bear to the total amount to be thereby raised shall be stated as accurately as circumstances may admit.

Moneys raised and the income arising from lodging houses in the parish to be applied towards defraying expenses.

XXVII. That the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the lodging houses in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

XXVIII. That the vestries of any two or more neighbouring parishes having, according to the then last census, an aggregate population of not less than ten thousand may, for the purpose of concurring in carrying this Act into execution, respectively adopt this Act in like manner as if the population of each of those parishes were, according to the then last census, not less than ten thousand; and the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes, in

such manner not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State, be agreed on between such vestries that any lodging houses shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall in the management of the said lodging houses form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes, and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

XXIX. That for the more easy execution of the purposes of this Act the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The commissioners for lodging houses in the parish of ( ) in the county of ( )," and by that name may sue and be sued in all courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Acts of commissioners to be good notwithstanding informalities.

XXX. That all Acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, shall, not withstanding his disqualification or want of qualification for, or any defect or irregularity in, or in any way concerning his appointment to such office, be valid and effectual as if he were duly qualified, or there had not been any such defect or irregularity.

Councils, &c. may borrow money for the purposes of the Act, with the approval of the Treasury.

XXXI. That for carrying this Act into execution in any borough, district or parish respectively, the council with the approval of the Commissioners of Her Majesty's Treasury, *and also with the approval of the General Board of Health* (*a*), and the board, with the approval of the Commissioners of Her Majesty's Treasury, and *also with the approval of the General Board of Health*, and the commissioners with the sanction of the vestry, and also with the approval of the Commissioners of Her Majesty's Treasury, and *also with the approval of the General Board of Health*, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the general district rates, or of the improvement rates, or of the rates for the relief of poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

XXXII. (*b*).

(*a*) The words in italics were repealed by the Statute Law Revision Act, 1875.
(*b*) Section 32 was repealed by the Statute Law Revision Act, 1875.

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Certain provisions of 8 & 9 Vict. c. 16, incorporated with this Act.

XXXIII. That the provisions of the Companies Clauses Consolidation Act, 1845 (*a*), with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough, to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall, in the application of such provisions to this Act be deemed to be required or directed to be made or executed, as regards a borough, under the common seal of the mayor, aldermen, and burgesses, and as regards a parish, under the common seal of the commissioners; and so much of such provisions as are applicable to the secretary of the company shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts, as regards a borough, the burgesses, and, as regards a parish, the ratepayers, shall have the privileges of shareholders.

Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

XXXIV. That the Lands Clauses Consolidation Act, 1845 (*b*), shall be incorporated with this Act: Provided always, that the council, the board, and the commissioners respectively shall not purchase or take any lands otherwise than by agreement.

In boroughs the council may appropriate, with consent of the Treasury, lands vested in the mayor, &c.

In parishes the commissioners may, with approval of vestry, &c., appropriate lands belonging to parish;

or contract for purchase of the same.

XXXV. That in any such borough the council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen and burgesses; and in any such district the board, *with the approval of the General Board of Health* (*c*) may from time to time appropriate for the purposes of this Act in the district any lands vested in the board or at the disposal of the board; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Board, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, and in any such borough the council, and in any such district the board, may from time to time, with the like respective approval, contract for the purchasing or renting of any lands necessary for the purposes of this Act; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish.

Councils and commissioners may erect lodging houses.

XXXVI. That the council and board and commissioners respectively may from time to time, on any lands so appropriated, purchased, or

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(*a*) *Ante*, p. 491.

(*b*) *Ante*, p. 505.

(*c*) The Statute Law Revision Act, 1875, repeals sections 35, 38, 42, and 43, so far as they relate to the approval of the General Board of Health.

rented, or contracted so to be, respectively, erect any buildings suitable for lodging houses for the labouring classes, and convert any buildings into lodging houses for the labouring classes, and may from time to time alter, enlarge, repair and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may enter into contracts for the purposes of this Act.

XXXVII. That the council and board and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such lodging houses, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purpose of this Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in the books to be kept for that purpose: Provided always, that a contract above the value or sum of one hundred pounds shall not be entered into by the council or the board or the commissioners for the purposes of this Act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or district or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or board or commissioners at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the council or board or commissioners to accept any of the proposals so offered.

No contract above 100*l.* to be entered into without notice.

Council or commissioners may purchase existing lodging houses.

XXXVIII. That the council of any such borough, and the board of any such district, and the commissioners, with such respective *approval* (*d*) as is by this Act required with respect to the purchasing or renting in any other case of any lands necessary for the purposes of this Act, may, if they shall think fit, contract for the purchase or lease of any lodging houses for the labouring classes already or hereafter to be built and provided in any such borough or district or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any lodging houses for the labouring classes which have been already or may hereafter be provided in any such borough or district or parish, by private subscriptions or otherwise, may, with the consent of the council of any such borough, or with the consent of the board of any such district, or with the consent of the commissioners, and with the like respective approval, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said lodging houses to the said council or board or commissioners respectively, or make over to them the management of such lodging houses; and in all such cases the lodging houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act, as fully as if they had

(*d*) See the note to section 35, *ante*, p. 660.

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been built or provided by the council or board or commissioners, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish.

Power to water and gas companies to supply water and gas to lodging houses.

XXXIX. That any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, and streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for such lodging houses, either without charge or on such other favourable terms as they shall think fit.

Councillors and commissioners not to be personally liable.

XL. That anything in this Act contained shall not render any member of the council of any borough, or any member of any such board, or any commissioner, personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or board or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

XLI. That every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or board or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845 (*a*), incorporated with this Act, he might have, if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, &c., empowered to make sale and exchange of lands, with consent.

XLII. That the council, with the *approval* (*b*) of the Commissioners of Her Majesty's Treasury, and the board, with the approval of the General Board of Health, and the commissioners appointed under this Act, with the approval of the vestry and of the Commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the board, or in the commissioners, respectively, for the purposes of this Act, and apply the proceeds, or a sufficient part thereof, in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the board, or the commissioners, may convey the lands so sold or exchanged accordingly.

When lodging houses are considered too expensive, they may, with approval of

XLIII (*b*). That whenever any lodging houses which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council, or by the board, or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the Commissioners of Her Majesty's Treasury, or

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(*a*) *Ante*, p. 491.
(*b*) See the note to section 35, *ante*, p. 660.

the board, with the approval of the General Board of Health, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the board, or the commissioners, shall convey the same accordingly, and the purchase money shall be paid to such person as the council or board or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same, and the net proceeds of such sale shall be applied in the first instance in or towards payment or satisfaction of all the debts, liabilities, and engagements whatsoever, with respect to the purposes of this Act, of the council, the board, or the commissioners, and the surplus, if any, of such net proceeds paid to the credit of the borough fund, or of the general district rate, or of the improvement rate, or of the rate for the relief of the poor of the parish.

Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

XLIV. Provided always, that whenever by reason of the sale of all the lodging houses provided under this Act for a parish, and the application as by this Act required of the net proceeds of such sale, and the performance of all other the duties under this Act of the commissioners for the parish, or by any other reason, it becomes needless for the commissioners for a parish to continue to be a corporation, such commissioners shall thereupon cease to be a corporation, and their office as commissioners for the parish shall thereupon cease, and this Act shall thereupon cease to be in force in the parish, but nevertheless this Act may thereafter be adopted for the parish.

Commissioners to cease to be a corporation when their duties have ceased.

XLV. That the general management, regulation, and control of the lodging houses established under this Act shall, subject to the provisions of this Act, be, as to any borough, vested in and exercised by the council, and as to any district vested in and exercised by the board, and as to any parish vested in and exercised by the commissioners.

Management to be vested in council and parish commissioners.

XLVI. That the bye-laws which the council and board and commissioners respectively may from time to time make, alter, repeal, and enforce shall include such bye-laws for the management, use, and regulation of the lodging houses, and of the tenants or occupiers thereof, and for determining from time to time the charges for the tenancy or occupation of the lodging houses, as the council and board and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants or by other persons, of any bye-law made by them respectively, and such bye-laws shall make sufficient provision for the several purposes respectively expressed in the schedule to this Act: Provided always, that a bye-law made under the authority of this Act shall not be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State.

Council, &c., may make bye-laws for regulating the lodging houses.

Bye-laws to be approved by the Secretary of State.

XLVII. That a printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein.

Bye-laws to be hung up in every room in the lodging houses.

XLVIII. That the council and the board and the commissioners respectively may from time to time make such reasonable charges for the tenancy or occupation of the lodging houses provided under this Act as they shall think fit.

Charges for occupation, &c., to be fixed by councils and commissioners.

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As to tenants of lodging houses receiving parochial relief.

XLIX. That any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging house or any part of such lodging house, receives any such relief, other than such relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

Lodging houses to be open to inspection of local boards of health.

L. That every lodging house established under this Act which shall be within the district of a local board of health shall at all times be open to the inspection of such board, and the officers thereof from time to time authorized by such board to make such inspection.

Penalty on council, commissioners, or officers taking fees beyond salaries, or being interested in contracts.

LI. That if any clerk or other officer or any servant who shall be in anywise employed by any council or board or commissioners in pursuance of this Act shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne, or to be done or forborne, in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or board or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or board or commissioners for or on account of anything done or forborne, or to be done or forborne, in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council, or member of the board, or commissioner, shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit not exceeding the sum of fifty pounds.

Application of penalties.

LII. That such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and, as regards a district, of the general district rate thereof or the improvement rate thereof, and, as regards a parish, of the rate for the relief of the poor thereof.

Not to extend to Scotland.

LIII. That nothing in this Act shall extend to *Scotland*.

SCHEDULE referred to by the foregoing Act.

1. Bye-laws to be made in all cases.

For securing that the lodging houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the council or board or commissioners.

For securing the due separation at night of men, and boys above eight years old, from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or board or commissioners.

2. Bye-laws to be made in boroughs, districts, and parishes wholly or partially within the districts of the local boards of health. Appndx.

For carrying out the regulations of the local boards of health.

3. Bye-laws to be made in parishes.

For regulating the procedure of the commissioners.

THE PUBLIC LIBRARIES ACT, 1855.

(18 & 19 Vict. Cap. 70) (*a*).

An Act for further promoting the establishment of Free Public Libraries and Museums in Municipal Towns, and for extending it to Towns governed under Local Improvement Acts and to Parishes.

[30th July, 1855.]

Whereas it is expedient to amend and extend the Public Libraries Act, 1850: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. The Public Libraries Act, 1850, is hereby repealed, but such repeal shall not invalidate or affect anything already done in pursuance of the same Act; and all libraries and museums established under that Act or the Act thereby repealed shall be considered as having been established under this Act, and the council of any borough which may have adopted the said Act of one thousand eight hundred and fifty, or established a museum under the Act thereby repealed, shall have and may use and exercise all the benefits, privileges, and powers given by this Act; and all moneys which have been borrowed by virtue of the said repealed Acts or either of them, and still remaining unpaid, and the interest thereof, shall be charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of this Act. 13 & 14 Vict. c. 65, repealed.

II. In citing this Act for any purposes whatever it shall be sufficient to use the expression "The Public Libraries Act, 1855." Short title of Act.

III. In the construction of this Act the following words and expressions shall, unless there be something in the subject or context repugnant to such construction, have the following meanings assigned to them Interpretation of terms.

(*a*) This Act and the amending Acts (29 & 30 Vict. c. 114; 34 & 35 Vict. c. 71; 40 & 41 Vict. c. 54, *post*) may be adopted by any local board (see 40 & 41 Vict. c. 54, s. 1, *post*), and are therefore included in this Appendix.

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respectively; that is to say, "parish" shall mean every place maintaining its own poor; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under the Act of the fifty-ninth year of King *George* the Third, chapter twelve, or under the Act of the first and second years of King *William* the Fourth, chapter sixty, or under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry; "ratepayers" shall mean all persons for the time being assessed to rates for the relief of the poor of the parish (*a*); "overseers of the poor" shall mean also any persons authorized and required to make and collect the rate for the relief of the poor of the parish, and acting instead of overseers of the poor; "board" shall mean the commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office and acting in the execution of any Improvement Act, being an Act for draining, cleansing, paving, lighting, watching, or otherwise improving a place, or for any of those purposes (*b*); "improvement rates" shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such Improvement Act shall be applicable for the general purposes of such Act (*b*).

Town councils of certain boroughs may adopt this Act if determined by inhabitants.

IV. The mayor of any municipal borough the population of which, according to the then last census thereof, shall exceed five thousand persons (*c*), shall, on the request of the town council (*d*), convene a public meeting of the burgesses of the borough, in order to determine whether this Act shall be adopted for the municipal borough, and ten days notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting; and if at at such meeting two-thirds of such persons as aforesaid then present shall determine (*e*) that this Act ought to be adopted for the borough, the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws

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(*a*) This definition is extended by 40 & 41 Vict. c. 54, s. 3, *post*.

(*b*) These definitions are extended by 34 & 35 Vict. c. 71, s. 2, *post*.

(*c*) The Act may now be adopted whatever the population. 29 & 30 Vict. c. 114, s. 6.

(*d*) Or on request in writing of ten ratepayers residing in the borough. 29 & 30 Vict. c. 114, s. 3, *post*.

(*e*) The opinion of the ratepayers may be taken by voting papers under 40 & 41 Vict. c. 54, *post*. The proportion now necessary is more than one-half. See 29 & 30 Vict. c. 114, s. 5. The right to demand a poll is a necessary incident to this mode of election. *Reg.* v. *St. Matthew, Bethnal Green* (*Vestry of*), 32 L. T. (N.S.) 558; 39 J. P. 502; and this right is not taken away by the 40 & 41 Vict. c. 54, *post*. *Reg.* v. *Wimbledon Local Board*, 8 Q. B. D. 459; 51 L. J. Q. B. 219; 46 L. T. (N.S.) 47; 30 W. R. 400; 46 J. P. 292.

for the time being in force relating to the municipal corporation of such borough: provided always, that the mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat.

Expenses of carrying Act into execution in a borough to be paid out of the borough fund.

V. . . . . (*f*) Distinct accounts shall be kept of the receipts, payments, and liabilities of the council with reference to the execution of this Act.

Board of any district within limits of any Improvement Act may adopt this Act if determined by inhabitants.

VI. The board of any district, being a place within the limits of any Improvement Act, and having such a population as aforesaid (*g*), shall upon the requisition in writing of at least ten persons assessed to and paying the improvement rate, appoint a time not less than ten days nor more than twenty days from the time of receiving such requisition for a public meeting of the persons assessed to and paying such rate in order to determine whether this Act shall be adopted for such district, and ten days notice at least of the time, place, and object of such meeting shall be given by affixing the same on or near the door of every church and chapel within the district, and also by advertising the same in one or more of the newspapers published or circulated within the district, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of such persons as aforesaid then present shall determine (*h*) that this Act ought to be adopted for the district, the same shall thenceforth take effect, and come into operation in such district, and shall be carried into effect according to the laws for the time being in force relating to such board.

Expenses of carrying Act into execution by improvement commissioners to be charged on improvement rate.

VII. The expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in any such district, shall be paid out of the improvement rate, and the board may levy as part of the improvement rate, or by a separate rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses; and the board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited in the same way as accounts are directed to be audited under the Improvement Act.

Certain parishes may adopt this Act, with the consent of two-thirds of the ratepayers.

VIII. Upon the requisition in writing of at least ten ratepayers of any parish having such a population as aforesaid (*g*), the overseers of the poor shall appoint a time, not less than ten days nor more than twenty days from the time of receiving such requisition, for a public meeting of the ratepayers in order to determine whether this Act shall be adopted for the parish; and ten days notice at least of the time, place, and object of the meeting shall be given by affixing the same on

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(*f*) The previous clauses of this section are repealed. See 29 & 30 Vict. c. 114, s. 2, *post*.

(*g*) See note (*c*), *supra*. Any local board may now adopt the Act. 34 & 35 Vict. c. 71, s. 1, *post*.

(*h*) See note (*e*) *supra*.

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or near the door of every church and chapel within the parish, and also by advertising the same in one or more of the newspapers published or circulated within the parish, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of the ratepayers then present shall determine (*a*) that this Act ought to be adopted for such parish, the same shall come into operation in such parish, and the vestry shall forthwith appoint not less than three nor more than nine ratepayers commissioners for carrying the Act into execution, who shall be a body corporate by the name of "The commissioners for public libraries and museums for the parish of in the county of ," and by that name may sue and be sued, and hold and dispose of lands, and use a common seal: provided always, that in any parish where there shall not be a greater population than eight thousand inhabitants by the then last census, it shall be lawful for any ten ratepayers to deliver a requisition by them signed, and describing their place of residence, to the overseers or one of the overseers of the said parish, requiring the votes of the ratepayers at such meeting to be taken according to the provisions of the Act passed in the fifty-eighth year of the reign of King *George* the Third, chapter sixty-nine, and the votes at such meeting shall thereupon be taken according to the provisions of the said last-mentioned Act of Parliament, and not otherwise.

The vestry to appoint commissioners for carrying the Act into execution, who shall be a body corporate.

IX. At the termination of every year (the year being reckoned from and exclusive of the day of the first appointment of commissioners) a meeting of the vestry shall be held, at which meeting one-third or as nearly as may be one-third of the commissioners, to be determined by ballot, shall go out of office, and the vestry shall appoint other commissioners in their place, but the out-going commissioners may be re-elected; and the vestry shall fill up every vacancy among the commissioners, whether occurring by death, resignation, or otherwise, as soon as possible after the same occurs.

One third of such commissioners to go out of office yearly, and others to be appointed, but those retiring may be re-appointed.

X. The commissioners shall meet at least once in every calendar month, and at such other times as they may think fit, at the public library or museum or some other convenient place; and any one commissioner may summon a special meeting of the commissioners by giving three clear days notice in writing to each commissioner, specifying therein the purpose for which the meeting is called; and no business shall be transacted at any meeting of the commissioners unless at least two commissioners shall be present.

General and special meetings of commissioners.

XI. All orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding whatsoever.

Minutes of proceedings of commissioners to be entered in books.

XII. The commissioners shall keep distinct and regular accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited yearly by the

Distinct accounts to be kept by commis-

(*a*) See note (*e*), *ante*, p. 666.

poor law auditor, if the accounts of poor rate expenditure of the parish be audited by a poor law auditor, but if not so audited, then by two auditors not being commissioners, who shall be yearly appointed by the vestry, and the auditor or auditors shall report thereon, and such report shall be laid before the vestry by the commissioners.

sioners, and duly audited.

XIII. The expenses of calling and holding the meeting of the rate-payers, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in any parish, to such amount as shall be from time to time sanctioned by the vestry, shall be paid out of a rate to be made and recovered in like manner as a poor rate, except that every person occupying lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be rated in respect of the same in the proportion of one-third part only of the full net annual value thereof respectively; the vestry to be called for the purpose of sanctioning the amount shall be convened in the manner usual in the parish; the amount for the time being proposed to be raised for such expenses shall be expressed in the notice convening the vestry, and shall be paid, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same: Provided always, that in the notices requiring the payment of the rate there shall be stated the proportion which the amount to be thereby raised for the purposes of this Act shall bear to the total amount of the rate.

Expenses of executing Act in any parish to be paid out of poor rate.

XIV. The vestries of any two or more neighbouring parishes having according to the then last census an aggregate population exceeding five thousand persons may adopt this Act, in like manner as if the population of each of those parishes according to the then last census exceeded five thousand, and may concur in carrying the same into execution in such parishes for such time as they shall mutually agree; and such vestries may decide that a public library or museum, or both, shall be erected in any one of such parishes, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually approve; the proportion for each of such parishes of such expenses shall be paid out of the moneys to be raised for the relief of the poor of the same respective parishes accordingly; but no more than three commissioners shall be appointed for each parish; and the commissioners so appointed for each of such parishes shall in the management of the said public library and museum form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts of the commissioners shall be examined and reported on by the auditor or auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the proportion in which such parishes shall be liable to such expenses.

Vestries of two or more neighbouring parishes may adopt the Act.

XV. The amount of the rate to be levied in any borough, district, or parish in any one year for the purposes of this Act shall not exceed the sum of one penny in the pound (*b*); and for the purposes of the library

Rates levied not to exceed one penny in the pound.

(*b*) That is, upon the rateable value of property actually capable of producing and yielding this amount: *Ex parte Brown, In re The Corporation of Liverpool,* 31 L. J. M. C. 108.

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rate all the clauses of the Towns Improvement Clauses Act, 1847, with respect to the manner of making rates, to the appeal to be made against any rate, and to the recovery of rates, shall be incorporated with this Act (*a*); and whenever the words "special Act" occur in the Act so incorporated they shall mean "The Public Libraries Act, 1855;" the accounts of the said board and commissioners respectively with reference to the execution of this Act shall at all reasonable times be open, without charge, to the inspection of every person rated to the improvement rate or to the rates for the relief of the poor of the parish, as the case may be, who may make copies of or extracts from such accounts, without paying for the same; and in case the board or the commissioners, or any of them respectively, or any of their respective officers or servants having the custody of such accounts, shall not permit the same accounts to be inspected, or copies of or extracts from the same to be made, every person so offending shall for every such offence forfeit any sum not exceeding five pounds.

Accounts of board and commissioners to be open to inspection.

Power to council, &c., to borrow on mortgage.

XVI. For carrying this Act into execution, the council, board, or commissioners respectively may, with the approval of Her Majesty's Treasury (and as to the commissioners, with the sanction also of the vestry and the Poor Law Board) (*b*), from time to time borrow at interest, on the security of a mortgage or bond of the borough fund, or of the rates levied in pursuance of this Act, such sums of money as may be by them respectively required, and the commissioners for carrying into execution the Act of the ninth and tenth years of Her Majesty, chapter eighty (*c*), may from time to time advance and lend any such sums of money.

Provisions of 8 & 9 Vict. c. 16, as to borrowing extended to this Act.

XVII. The clauses and provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money on mortgage or bond, and the accountability of officers, and the recovery of damages and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act.

Lands, &c., may be appropriated, purchased, or rented for the purposes of this Act.

XVIII. The council of any borough and the board of any district respectively may from time to time, with the approval of Her Majesty's Treasury, appropriate for the purposes of this Act any lands vested, as the case may be, in a borough, in the mayor, aldermen, and burgesses, and in a district in the board; and the council, board, and commissioners respectively may also, with such approval, purchase or rent any lands or any suitable buildings; and the council and board and commissioners respectively may, upon any lands so appropriated, purchased, or rented respectively, erect any buildings suitable for public libraries or museums, or both, or for schools for science or art, and may apply, take

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(*a*) So much of this section as incorporates the Towns Improvement Clauses Act, 1847, is repealed so far as the same relates to municipal boroughs: 29 & 30 Vict. c. 114, s. 1, *post;* and this section is not to apply to rates made by local boards: 34 & 35 Vict. c. 71, s. 3, *post.*

(*b*) Now the Local Government Board: 34 & 35 Vict. c. 70, *post.*

(*c*) Now repealed. But see the Public Works Loans Act, 1875, *post.*

down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences. Appndx.

XIX. "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act; but the council, board, and commissioners respectively shall not purchase or take any lands otherwise than by agreement. Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

XX. The council, board, and commissioners aforesaid respectively may, with the like approval as is required for the purchase of lands, sell any lands vested in the mayor, aldermen, and burgesses, or board, or commissioners respectively, for the purposes of this Act, or exchange the same for any lands better adapted for the purposes; and the moneys to arise from such sale, or to be received for equality of exchange, or a sufficient part thereof shall be applied in or towards the purchase of other lands better adapted for such purposes. Lands, &c., may be sold or exchanged.

XXI. The general management, regulation, and control of such libraries and museums, schools for science and art, shall be, as to any borough, vested in and exercised by the council, and as to any district in and by the board, and as to any parish or parishes in and by the commissioners, or such committee as such council or board may from time to time appoint, the members whereof need not be members of the council or board or be commissioners, who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science, for the use of the library or museum, or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public. General management to be vested in council, board, or commissioners.

XXII. The lands and buildings so to be appropriated, purchased, or rented as aforesaid, and all other real and personal property whatever presented to or purchased for any library or museum established under this Act, or school, shall be vested, in the case of a borough, in the mayor, aldermen, and burgesses, in the case of a district in the board, and in the case of a parish or parishes in the commissioners. Property of library, &c., to be vested in council, board, and commissioners respectively.

XXIII. If any meeting called as aforesaid to determine as to the adoption of this Act for any borough, district, or parish shall determine against the adoption, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting. If any meeting determine against adoption of Act no other meeting to be called for a year.

XXIV. The lord mayor of the city of *London* shall, on the request of the lord mayor, aldermen, and commons of the city of *London*, in common council assembled, convene a public meeting in manner hereinbefore mentioned of all persons rated and assessed to the consolidated rate in the city of *London*, in order to determine whether this Act shall be adopted in the said city; and if at such meeting two-thirds of such Act may be adopted in the city of London if two-thirds of persons rated to the

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consolidated rate, assembled at a public meeting, assent.

persons then present shall determine (*a*) that this Act ought to be adopted for the city of *London*, the same shall thenceforth take effect and come into operation in the city of *London*, and shall be carried into execution in accordance with the laws for the time being in force relating to the city of *London:* Provided always, that the resolution of such public meeting, signed by the lord mayor, shall be reported to the said lord mayor, aldermen, and commons, in common council assembled, and entered on the minutes thereof, and that such entry shall be evidence; the expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in the city of *London*, shall be paid out of the consolidated rate, and the commissioners of sewers of the city of *London* may levy a part of the consolidated rate, or, by a separate rate, to be assessed and recovered in like manner as the consolidated rate, all moneys from time to time necessary for defraying such expenses; and distinct accounts shall be kept of the receipts, payments, and liabilities of the said lord mayor, aldermen, and commons with reference to the execution of the Act.

Museums to be free.

XXV. The admission to all libraries and museums established under this Act shall be open to the public free of all charge.

Extent of Act.

XXVI. This Act shall not extend to *Ireland* or *Scotland*.

THE BURIAL ACTS AMENDMENT ACT, 1857.

(20 & 21 Vict. Cap. 81) (*b*).

An Act to amend the Burial Acts. [25th August, 1857.]

15 & 16 Vict. c. 85. 16 & 17 Vict. c. 134. 17 & 18 Vict. c. 87.

Whereas an Act was passed in the session holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the Laws concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in *England* beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session holden in the seventeenth and eighteenth years of Her Majesty (chapter eighty-seven),

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(*a*) See note (*e*), *ante*, p. 666.

(*b*) The following clauses are such as concern the appointment and duties of local authorities as burial boards. It is of course impossible to include in the Appendix all the provisions of the Burial Acts, for which reference should be made to *Glen's Burial Acts*. See also 23 & 24 Vict. c. 64, *post*, and 25 & 26 Vict. c. 100, *post*. See also the Public Health Act, 1875, sections 310, 343, and Schedule V., Part 3, *ante*.

"to make further Provision for the Burial of the Dead in *England* beyond the Limits of the Metropolis;" and Acts were passed in the session holden in the eighteenth and nineteenth years of Her Majesty (chapters seventy-eight and one hundred and twenty-eight), "to amend the Laws concerning the Burial of the Dead in *England*;" and whereas it is expedient to amend the said Acts: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:

18 & 19 Vict cc. 78, 128.

* * * * *

Local board of health may, by order in council, be constituted a burial board.

IV. In case it appear to Her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of Her Privy Council in case Her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorization of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848 (*c*).

Burial board may be established for a district not main-

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a

(*c*) See the Public Health Act, 1875, section 4, *ante*, p. 3.

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taining its own poor, and which has had no separate burial ground

burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh *Victoria*, chapter thirty-seven, the seventh and eighth *Victoria*, chapter ninety-four, and the nineteenth and twentieth *Victoria*, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable), shall with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

* * * * *

Resolutions &c., of vestries not to be void by reason of irregularity of notices, &c.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

XXVIII. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts or any of them, or under this Act. "Burial board." Appndx.

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XXX. The hereinbefore recited Acts and this Act shall be construed together as one Act. Recited Acts and this to be as one.

THE PUBLIC HEALTH ACT, 1858.

(21 & 22 VICT. CAP. 97) (*a*).

An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health. [2nd August, 1858.]

WHEREAS under an Act of the last session of Parliament, chapter thirty-eight, the General Board of Health stands continued only until the first day of *September*, one thousand eight hundred and fifty-eight: And whereas it is expedient to vest in the Privy Council certain powers now vested in the said General Board of Health, and certain other powers for the protection of the public health: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 20 & 21 Vict. c. 38.

I. In addition to the powers vested in Her Majesty's most Honourable Privy Council for the protection of the public health, all powers now vested in the General Board of Health under the "Diseases Prevention Act, 1855," shall, upon the discontinuance of the said board, be vested in the said *Privy Council* (*a*), and the provisions of the said Act having reference to the General Board of Health and the regulations and directions issued by them, except section thirteen, shall be construed as referring to such *Privy Council* (*a*) and the regulations and directions issued by them. Powers of General Board of Health under 18 & 19 Vict. c. 116, added to those of the Privy Council.

II. (*b*).

III. The *Privy Council* (*a*) may from time to time cause to be made such inquiries as they see fit in relation to any matters concerning the public health in any place or places, and to the observance of the regulations and directions issued by them under this Act. Privy Council may direct inquiries.

IV. The powers of appointing and removing a medical officer, vested in the General Board of Health under the General Board of Health Privy Council to appoint medical officer, &c.

(*a*) The powers and duties of the Privy Council under sections 1, 3, 5, and 6 of this Act are now transferred to the Local Government Board by 34 & 35 Vict. c. 70, *post*.

(*b*) Repealed by 30 & 31 Vict. c. 84, s. 1.

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Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the Privy Council (*a*) . . . . ; and the Privy Council may also from time to time employ such other persons as they deem necessary for the purposes of this Act ; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds *per annum*, and to such other persons such remuneration and allowances, as the Commissioners of Her Majesty's Treasury may direct ; and such salary, remuneration, and allowances shall be paid out of such moneys as shall be provided by Parliament (*b*).

Medical officer to report annually as to the execution of this Act.

V. The medical officer shall from time to time report to the *Privy Council* (*c*) in relation to any matters concerning the public health or such matters as may be referred to him for that purpose, and shall, in or before the month of *March* in each year, report to the *Privy Council* (*c*) the proceedings had and taken under this Act during the preceding year ending on the thirty-first day of *December*.

Reports to be laid before Parliament.

VI. The annual report made by the medical officer as aforesaid shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if not, then within fourteen days after the next meeting of Parliament, together with all other reports made by him under this Act, during the period to which such annual report relates.

As to the making and authentication of orders, &c.

VII. All powers vested in the Privy Council by this Act may be exercised by any three or more of the lords and others of the Privy Council, the Vice-President of the Committee of the said Privy Council on Education being one of them, and all orders, regulations, directions, and acts of the Privy Council under this Act shall be sufficiently made and signified by a written or printed document, signed by one of the clerks of the Privy Council, or such officer as may be appointed by the Privy Council in this behalf ; and all orders, regulations, directions, and acts made or signified by any written or printed document purporting to be so signed shall be deemed to have been duly made, issued, and done by the Privy Council, and every such document shall be received in evidence in all courts and before all justices and others without proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the Privy Council.

VIII. (*d*).

Short Title.

IX. This Act may be cited as "The Public Health Act, 1858." . .

(*a*) The next clause of this section as it originally stood was repealed by the Statute Law Revision Act, 1878.

(*b*) Section 4 is repealed by the Statute Law Revision Act, 1875, in so far as it relates to the salary of the medical officer. As to the salary of this officer see the Public Health Act, 1875, Sched. V., Part III., *ante*, p. 445.

(*c*) The powers and duties of the Privy Council under sections 1, 3, 5, and 6 of this Act are now transferred to the Local Government Board by 34 & 35 Vict. c. 70, *post*.

(*d*) Repealed by 22 & 23 Vict. c. 3.

THE LOCAL TAXATION RETURNS ACT, 1860.

(23 & 24 Vict. Cap. 51) (*e*).

An Act to provide for an Annual Return of Rates, Taxes, Tolls, and Dues levied for Local Purposes in England. [23rd July, 1860.]

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Whereas rates, taxes, tolls, and dues to a large amount are levied for purposes of local government and improvements in *England*, and it is proper that Parliament should be informed annually of all sums so levied, and the expenditure thereof, but in many cases no sufficient provision has been made for that purpose: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Clerks of bodies empowered to levy rates, &c., to make annual returns to Secretary of State.

I. The clerk to any corporation, justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorized to levy or to order to be levied any of the rates, taxes, tolls, or dues mentioned in the schedule to this Act, or any other compulsory rates, taxes, tolls, or dues in *England* (other than such as are levied for the public revenue of the United Kingdom), shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of Her Majesty's principal Secretaries of State in the month of *June* in every year (*f*). . . .

Returns to be made for the latest year for which accounts are made up.

II. Such returns shall be made for the latest period of twelve months preceding the month of *June* in each year for which the accounts of the corporation, justices, commissioners, board, inspectors, trustees, or other body or persons, shall be made up, and shall show the amounts levied and expended respectively, with such other particulars and in such form as shall from time to time be ordered by such Secretary of State (*f*).

Who are to make returns in certain cases.

III. Where no clerk is appointed or acting, the treasurer or other officer keeping the accounts of the receipts and expenditure of the corporation, justices, commissioners, board, vestry, inspectors, trustees, or other body or persons by whom any rates, taxes, tolls, or dues hereinbefore mentioned are levied or ordered to be levied shall make the

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(*e*) This Act is repealed as to boroughs within the Municipal Corporation Act, 1882, 45 & 46 Vict. c. 50, Schedule (I.), Part II. As to returns to be made in such boroughs, see section 28 of that Act. This Act is amended by 40 & 41 Vict. c. 66, *post*. It is extended to highway accounts by 42 & 43 Vict. c. 39, and 45 & 46 Vict. c. 67.

(*f*) The annual return must now be made for the year ending 25th March, and must be sent to the Local Government Board. The return may be dispensed with where the accounts are audited by a district auditor: 42 Vict. c. 6, s. 3, *post*; 40 & 41 Vict. c. 66, s. 1, *post*.

Appndx.

returns in relation thereto; and where any such rates, taxes, tolls, or dues are levied and expended or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorized to act as a board, such returns as hereinbefore mentioned in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, shall be made by such churchwardens, chapelwardens, or other officers or persons, and they shall be severally liable in respect of any neglect to make the same (*a*).

Penalty for default.

IV. Any clerk, treasurer, churchwarden, officer, or other person required as aforesaid to make such return who neglects so to do in the month of *June* in any year shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recoverable on summary conviction thereof before two justices (*b*).

Saving for returns already required.

V. Where any annual return is now by law required to be made to the Secretary of State, or to any public department, under any Act of Parliament, this Act shall not render necessary any further or other return in respect of the same matters: Provided always, that the said Secretary of State may, by his order published in the *London Gazette*, direct that all or any of such returns now required as aforesaid shall in future be made under this Act, and shall be subject to the provisions and penalties thereof.

Abstracts of returns to be laid before Parliament.

VI. The said Secretary of State shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both Houses of Parliament.

Poor rate returns to be made to Poor Law Board as heretofore.

VII. This Act shall not extend to the rates levied for the relief of the poor, or the expenditure thereof, but the returns thereof shall continue to be made to the Poor Law Board (*c*), as by the orders of such board shall from time to time be directed.

Saving for joint-stock companies and private rights of toll, &c.

VIII. This Act shall not extend to any tolls or dues taken by any railway, canal, or joint-stock company as profits of their undertaking, or to any tolls or dues taken by prescription or otherwise as private property.

SCHEDULE.

Church rates and chapel rates; whether made by the common law or under the Church Building Acts, or under any other Act of Parliament.

Sewers rates and "general sewers tax," and all rates, scots, and taxes levied by courts or commissioners of sewers; whether levied under the

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(*a*) See 40 & 41 Vict. c. 66, s. 2, *post*.
(*b*) See also 40 & 41 Vict. c. 66, s. 2.
(*c*) Now the Local Government Board: 34 & 35 Vict. c. 70, *post*.

Acts of 3 & 4 Will. 4, c. 22, and 4 & 5 Vict. c. 45, or under any other Act of Parliament, or by charter, usage, or custom (*d*). Appndx.

Rates under the Act for the lighting and watching of parishes, 3 & 4 Will. 4, c. 90.

Rates levied by improvement commissioners or other commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation of any town or district.

Rates levied by or under the order of any vestry or district board, under the Act 18 & 19 Vict. c. 120, for the better local management of the metropolis.

Tolls and dues levied under the authority of Parliament in respect of markets, bridges, or harbours.

THE BURIAL ACT, 1860.

(23 & 24 Vict. Cap. 64) (*e*).

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.

[6th August, 1860.]

Whereas by an Act passed in the session holden in the twentieth and twenty-first years of Her Majesty (chapter eighty-one), "to amend the Burial Acts," it is provided that upon the petition of the Local Board of Health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under and by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such Local Board of Health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it should be lawful for Her Majesty, with the advice of her Privy Council, in case Her Majesty see fit so to do, to order that such local board should be a burial board for the district of such local board, or that such commissioners should be a burial board for the district of such commissioners, and that thereupon such local board or such commissioners, as the case might be, should be a burial board for such district accordingly: And whereas under "The Local Government Act, 1858," a local board may, at the option of the vestry, be the burial board in certain cases: And whereas it is expedient that such local boards and commissioners respectively, when constituted burial boards, should be authorized to provide for their expenses as hereinafter mentioned: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

20 & 21 Vict. c. 81.

21 & 22 Vict. c. 98, s. 49.

(*d*) As to returns by sanitary authorities, see 40 & 41 Vict. c. 66, ss. 2, 3.

(*e*) See 20 & 21 Vict. c. 81, *ante*, p. 672, and 25 & 26 Vict. c. 100, *post*.

Appndx.

Expenses of local board constituted a burial board may be paid out of general district rate, or by a separate rate.

I. Any money required by any local board constituted a burial board, for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improvement rate, or by a separate rate.

II. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed, or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them (*a*).

Separate accounts to be kept.

III. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively, and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act (*b*).

As to appointment of burial boards without consent of Secretary of State.

IV. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's principal Secretaries of State.

(*a*) See 25 & 26 Vict. c. 100, s. 1, *post*.

(*b*) As to the form of these accounts, see *Glen's Local Government Orders*, at pp. 389—392.

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 Vict. Cap. 106.)

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.

[20th August, 1860].

Appndx.

8 & 9 Vict. c. 18.

WHEREAS it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department, or for the defence of the realm: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Part of section 10 of recited Act repealed.

I. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed (*c*).

Sects. 10 and 11 of recited Act as to power to sell &c., lands for an annual rentcharge and to recover, extended to all sales, &c. where parties are under disability.

II. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation except under the provisions of the said Act (*d*).

* * * * *

Amount of rentcharge to be settled in manner directed in the 9th section of recited Acts (*e*).

IV. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner

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(*c*) This section was repealed by the Statute Law Revision Act, 1875, but it is retained here to explain the repeal affected by it. See 8 & 9 Vict. c. 18, s. 10, *ante*, p. 509.

(*d*) See these sections, *ante*, p. 509; section 3 relates to Scotland only.

(*e*) See the section, *ante*, p. 509.

Appndx.

directed in the ninth section of each of the said Acts respectively : Provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years ; and that a charge of five *per cent.* on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual ; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual made payable for such lands : Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

V. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c., for public purposes.

VI. The clauses contained in "The Lands Clauses Consolidation Act (1845)," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability (*a*), shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the commissioners of Her Majesty's Treasury, under the powers for that purpose contained in "The Municipal Corporation Mortgages, &c., Act, (1860)."

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This Act and 8 & 9 Vict. cc. 18 & 19 to be construed together.

VIII. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (*Scotland*) Act, 1845, in all matters in which it relates to the said Acts respectively ; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Acts Amendment Act, 1860."

(*a*) That is sections 6—15 *ante*, p. 507, and sections 69—80, *ante*, p. 522. This section is repealed as to boroughs within the Municipal Corporation Act, 1882. See Schedule I., Part II., of that Act.

THE BURIAL ACT, 1862.

(25 & 26 Vict. Cap. 100) (*b*).

An Act to authorize Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the Purposes of the Burial Acts.

[7th August, 1862.]

Appndx.

23 & 24 Vict. c. 64.

Whereas by an Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her Majesty (chapter sixty-four), to make further provision for the expenses of local boards of health and improvement commissioners acting as burial boards, it was enacted, that any money required by any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who should have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, might, if the commissioners thought fit, be paid out of the improvement rate leviable within such district; and the commissioners, as such burial board, might levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as should be from time to time necessary for the purposes aforesaid or any of them: And whereas doubts have arisen whether under such provisions the improvement rate or burial rate can be legally mortgaged or assigned as a security for the payment of the sums referred to in the said Act, and it is expedient that the commissioners acting as such burial board should have the power of mortgaging the said rates: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Commissioners, with consent of Treasury, may mortgage improvement rate and burial rate, or either.

I. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the commissioners of Her Majesty's Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district (*c*).

(*b*) See 20 & 21 Vict. c. 81, *ante*, p. 672; and 23 & 24 Vict. c. 64, *ante*, p. 679.

(*c*) This is an amendment of 23 & 24 Vict. c. 64, s. 2, *ante*, p. 680.

Appndx.

Certain provisions of 10 & 11 Vict. c. 16, to apply to this Act.

II. The clauses and provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof.

THE WATERWORKS CLAUSES ACT, 1863.

(26 & 27 Vict. Cap. 93) (*a*).

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Waterworks. [28th July, 1863.]

10 & 11 Vict. c. 17.

Whereas the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorizing the construction of certain waterworks:

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for ensuring greater uniformity in the provisions themselves:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

I. This Act may be cited as the Waterworks Clauses Act, 1863; and the Waterworks Clauses Act, 1847, and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

Application of Act and interpretation of terms.

II. This Act shall apply to any waterworks to which any special Act (*b*) hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act."

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act (*c*).

(*a*) See 10 Vict. c. 17, and note (*a*), *ante*, p. 587.

(*b*) See 38 & 39 Vict. c. 55, s. 316, *ante*, p. 367.

(*c*) 10 & 11 Vict. c. 17, s. 85. The procedure for recovery of penalties is that provided by the Railways Clauses Act, 1845.

Security of Reservoirs.

Appndx.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:

Power for justices to inquire as to danger of reservoir.

III. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them.

Order of justices for immediate repair.

IV. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on undertakers to repair reservoir.

V. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall, order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on failure of undertakers to repair.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertaker, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

Form of order.

VI. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this Act, with such variations as circumstances require.

Persons acting under order not trespassers.

VII. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates, or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Appndx.

Order for payment of costs and expenses.

VIII. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such persons as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by undertakers.

IX. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845 (*a*), are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

Undertakers not to be responsible for consequences of order.

X. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or nonperformance of their or any of their duties, liabilities, or obligations under the special Act, that may be occasioned by or result from the execution of any such order (*b*).

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Supply of Water.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Supply for other than domestic purposes.

XII. A supply of water for domestic purposes (*c*) shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

Want of supply for other than domestic

XIII. Where the undertakers are authorized by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the

(*a*) 8 & 9 Vict. c. 20, s. 138.
(*b*) Section 11 relates to Scotland only.
(*c*) See 10 & 11 Vict. c. 17, s. 53, *ante*, p. 598, and the notes thereto.

supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

Penalty for other purposes, when excused.

XIV. Where the undertakers are authorized by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be (*d*).

Power to let meters for hire.

XV. The officers of the undertakers may enter any house, building, or lands to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice or the sheriff, this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon (*e*).

Power for ascertaining quantity consumed by meter, and for removing meters, &c.

Protection of Water.

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows:

XVI. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or

Power to cut off water in certain cases.

(*d*) An obligation on the part of a consumer to provide a meter cannot be implied from this section: *Sheffield Waterworks Company* v. *Carter*, 8 Q. B. D. 632; 51 L. J. M. C. 97; 30 W. R. 889; 46 J. P. 548. As to the duty of a consumer to provide some means of measuring the water, see *Sheffield Waterworks Company* v. *Bingham*, 52 L. J. Ch. 624; 48 L. T. (N.S.) 604.

(*e*) See also the Public Health Act, 1875, s. 58, *ante*, p. 68.

Appndx.

through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

Penalty for waste, &c., of water by non-repair of pipes, &c.

XVII. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for application of water contrary to agreement.

XVIII. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes, uses, for other than domestic purposes, any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Penalty for extension or alteration of pipes.

XIX. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alterations in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed (*a*).

Penalty for use of water without agreement.

XX. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

(*a*) See also 10 & 11 Vict. c. 17, s. 59, *ante*, p. 599.

Recovery of Rates.

And with respect to the recovery of water rates and other money, be it enacted as follows: Appndx.

XXI. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof (*b*). Recovery of rates by action.

SCHEDULE.

Form of Order of Justices.

To *A. B.*, of &c.

We, the undersigned, two of Her Majesty's justices of the peace acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [*here describe the reservoir, and the extent to which the water is to be lowered*], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the], and for acting as you are hereby directed this shall be your sufficient warrant.

Given under our hands this day of one thousand eight hundred and

A. B.
C. D.

(*b*) See 10 & 11 Vict. c. 17, s. 74, *ante*, p. 603.

THE LABOURING CLASSES DWELLING HOUSES ACT, 1866.

(29 Vict. Cap. 28) (*a*).

An Act to enable the Public Works Loan Commissioners to make Advances towards the Erection of Dwellings for the Labouring Classes.
[18th May, 1866.]

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Whereas by "The Labouring Classes Lodging Houses Act, 1851," powers were vested in certain local authorities for the purpose of facilitating the erection of lodging houses for the labouring classes :

And whereas it is desirable that further provision should be made for facilitating and encouraging the erection of dwellings for the labouring classes in populous places :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

I. This Act may be cited as "The Labouring Classes Dwelling Houses Act, 1866."

Act incorporated with 14 & 15 Vict. c. 34.

II. This Act shall be deemed to be incorporated with and shall be taken as part of "The Labouring Classes Lodging Houses Act, 1851" (*b*), and the two Acts shall be read and construed together as if they were one Act.

Application of 24 & 25 Vict. c. 80, to this Act.

III. All the clauses, powers, authorities, provisos, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in and conferred and imposed by the Act of the session of the twenty-fourth and twenty-fifth years of Her Majesty's reign, chapter eighty (Public Works and Harbours Act) (*c*), and the Acts therein referred to, or any of them, so far as the same can be made applicable and are not varied by this Act, shall be taken to extend to this Act, and to everything to be done in pursuance of this Act, and as if the same were herein repeated and set forth.

Authorities and persons to whom loans may be made.

IV. For the purpose hereinafter mentioned, the Public Works Loan Commissioners, as defined by the said Act of the twenty-fourth and twenty-fifth years of Her Majesty, may out of the funds for the time being at their disposal from time to time advance on loan to any such local or other authority as hereinafter mentioned, namely,

Any council, board, or commissioners authorized to carry into execution "The Labouring Classes Lodging Houses Act, 1851 ;"

(*a*) See 14 & 15 Vict. c. 34, *ante*, p. 652, and 30 Vict. c. 28, *post*.
(*b*) *Ante*, p. 652.
(*c*) The Act referred to is repealed by the Public Works Loans Act, 1875, *post*.

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Any local or other authority invested with powers of town or local government and rating under any public general or any local Act, by whatever name such local or other authority may be called ;

Any local authority acting under the "Nuisances Removal Act, 1855," or any Act or Acts amending the same (*d*) ; 18 & 19 Vict. c. 121.

or to any such body or proprietor as hereinafter mentioned, namely,

Any railway company, or dock or harbour company, or any other company, society, or association established for the purposes of this Act, or for trading or manufacturing purposes ;

Any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired ;

And any such local or other authority, or any such body or proprietor, may from time to time borrow from the Public Works Loan Commissioners such money as may be required for the purpose of this Act, subject and according to the following provisions :

1. Such advance on loan shall be made for the purpose of assisting in the purchase of land and buildings, or in the erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes, and in providing all conveniences which may be deemed proper in connection with such dwellings : Objects of loans.
2. Any such advance may be made whether the local or other authority or body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act ; but nothing in this Act contained shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up :
3. No sum shall be advanced without the approval of the Commissioners of Her Majesty's Treasury of the borrowing thereof, signified by some writing under the hand of one of their secretaries or assistant secretaries :
4. It shall be lawful for the said Commissioners of Her Majesty's Treasury to make such rules and regulations as they shall from time to time think proper with respect to applications for advances under this Act, and the terms and conditions upon which such advances are to be made, and to issue such instructions and forms as they may think proper for the guidance of and observance by persons applying for or receiving loans, or executing works, or rendering accounts of moneys expended under this Act ; or regarding the class of dwellings towards the providing of which such loans may be made, and the adaptation thereof to the purposes intended, and as to the mode of providing for their maintenance, repair, and insurance : Rules and regulations.
5. The period for the repayment of the sums advanced shall not exceed forty years : Currency of loans.
6. The repayment of the money advanced, with interest thereon at such rate as shall be agreed upon, but not at a less rate than four pounds *per centum per annum*, shall be secured as follows ; namely, in the case of an advance to any such local or other authority as aforesaid, either by a mortgage solely of the rates

(*d*) Now the Public Health Act, 1875 ; see section 313 of that Act, *ante*, p. 366.

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leviable by such authority, or by such other mortgage as hereinafter mentioned, or by both ; and in any other case by a mortgage of the estate or interest of any such local or other authority, or of any such body or proprietor as aforesaid, *in the land or dwellings for the purposes of which the advance is made* (*a*) ; and in the case of an advance to a company any part of whose capital remains uncalled up or unpaid, by a mortgage also of all capital so remaining uncalled up or unpaid ; and any such mortgage as aforesaid may be taken either alone or together with any other security which may be agreed upon ; but it shall not be incumbent on the Public Works Loan Commissioners to require any other security :

7. No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance :
8. The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged ; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid ; and a mortgage may be accordingly made to secure such advances so to be made from time to time :
9. For the purposes of this Act every such local or other authority or body as aforesaid is hereby authorized to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

Incorporation of 8 & 9 Vict. cc. 18 and 19, with this Act.

V. The Lands Clauses Consolidation Act, 1845 (*b*), and the Lands Clauses Consolidation (*Scotland*) Act, 1845, and any Act amending the same, except the clauses in the said Acts respectively with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with this Act, and for the purposes of those Acts this Act shall be deemed the special Act ; and any such local or other authority or body or proprietor as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Incorporation of 10 & 11 Vict. c. 16, with this Act.

VI. The clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners, except so far as the same may be inconsistent with the provisions of the said Act of the twenty-fourth and twenty-fifth years of Her Majesty, chapter eighty, or

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(*a*) These words are to be construed to include any land, buildings, or premises held together with and for the same estate and interest as the land, buildings, or premises upon which the money advanced is to be expended under the provisions of this Act : 30 Vict. c. 28, s. 2, *post*. By section 3 of the same Act a mortgage may be dispensed with in the case of a company part of whose capital is unpaid.

(*b*) *Ante*, p. 505.

of any of the Acts therein recited, shall be incorporated with this Act; and in the construction of this Act and of the said incorporated clauses this Act shall be deemed the special Act; and the local or other authority, or the body or proprietor, to whom the loan is made, shall be deemed to be the commissioners; but the said incorporated clauses shall not, so far as they prescribe the manner of executing mortgages, or so far as they require a register to be kept of mortgages, or transfers of mortgages, apply to any mortgage made under this Act by any proprietor being a private person; and all mortgages executed by any proprietor being a private person shall be executed in the usual manner.

Special powers of mortgagees.

VII. Every mortgage under this Act shall confer on the mortgagee thereunder for the time being all the rights, powers, and privileges conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of Her Majesty, chapter one hundred and forty-five, intituled *An Act to give to Trustees, Mortgagees, and others certain Powers now commonly inserted in Settlements, Mortgages, and Wills;* and any such mortgage may confer on the mortgagee such further powers of sale and other powers, and may also contain all such covenants and provisions, as may be agreed upon; and nothing contained in this Act or in any clauses incorporated in the "Labouring Classes Lodging Houses Act, 1851," or in this Act, shall be deemed to limit or prevent the enforcement of any rights or remedies which, at law or in equity or by statute, may be otherwise incidental to any such mortgage, either under the Acts relating to the Public Works Loan Commissioners, or otherwise.

Powers to companies.

VIII. Any railway company, or dock or harbour company, or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the labouring class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary) authorized at any time or from time to time to erect, either on their own land or on any other land (which they are hereby authorized to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the labouring class employed by them, and shall have all the like powers of borrowing and other powers which are hereinbefore conferred on any such body or proprietor as hereinbefore mentioned.

Rules to be laid before Parliament.

IX. All rules and regulations made by the Lords Commissioners of the Treasury under the provisions of this Act shall be laid before Parliament.

Extent of Act.

X. This Act shall not extend to *Ireland.*

THE POOR LAW AMENDMENT ACT, 1866.

(29 & 30 Vict. Cap. 113) (*a*).

An Act to amend the Act providing Superannuation Allowances to Officers of Unions and Parishes, and to make other Amendments in the Laws relating to the Relief of the Poor. [10th August, 1866.]

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Remission of surcharges and disallowances need not be made by order under seal.

V. So much of the fourth section of the statute of the eleventh and twelfth years of the reign of Her Majesty, chapter ninety-one, as requires the Poor Law Board to issue an order under their seal in cases where they direct any surcharge or disallowance made by an auditor to be remitted shall be repealed ; and such direction, if given in writing under the hand of the president of the said board, and countersigned by a secretary or assistant secretary, shall have the same effect as if such direction were given by such an order as aforesaid (*b*).

Effect of an extraordinary audit.

VI. When the Poor Law Board shall require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation or removal from office, such audit shall be deemed to be an audit within the meaning of the several Acts relating to the audit of the accounts of the poor rate, and may be held after three days notice thereof given in the usual manner.

Auditor empowered to inspect books at any time.

VII. The auditor who shall be authorized to audit the accounts of any guardians, overseers, or officers may at any time, when authorized or required by the Poor Law Board so to do, inspect the accounts and books of account of any guardians, overseer, or any officer liable to account to him ; and any such guardian, overseer, or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection, shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the statute of the fourth and fifth of King *William* the Fourth, chapter seventy-six (*c*) and to be applied to the use of the parish or union for which such guardian, overseer, or officer respectively shall act.

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(*a*) The following clauses relate to the audit of accounts and are incorporated by the Public Health Act, 1875, sections 247, 248, *ante*, pp. 283-6. See also 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 91 ; 12 & 13 Vict. c. 103, *ante*; and 42 Vict. c. 6, *post*.

(*b*) See the section, *ante*, p. 648.

(*c*) That is under section 99, but now according to the provisions of the Summary Jurisdiction Acts.

THE PUBLIC LIBRARIES AMENDMENT ACT, 1866.

(29 & 30 Vict. Cap. 114) (*d*).

An Act to amend the Public Libraries Act. [10th August, 1866.]

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18 & 19 Vict. c. 70.

Whereas it is expedient to amend the Public Libraries Act, 1855, and to assimilate the laws relating to public libraries in *England* and *Scotland* : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Towns Improvement Clauses Act not to apply to boroughs.

I. So much of the section fifteen of the said Public Libraries Act, 1855, as incorporates with that Act certain clauses of the Towns Improvement Clauses Act, 1847, shall, so far as the same relates to or concerns municipal boroughs, be repealed.

Part of sect. 5 of recited Act repealed.

Expenses of executing Act in boroughs to be paid out of borough fund.

II. Section 5 of the said Act, except so much thereof as relates to keeping distinct accounts, shall be repealed ; and the expenses incurred in calling and holding the meeting, whether the said Act shall be adopted or not, and the expenses of carrying the said Act into execution in any municipal borough, may be paid out of the borough rate of such borough, or by and out of a rate to be made and recovered in such borough, in like manner as a borough rate may be made and recovered therein, but the amount so paid in such borough in any one year shall not exceed the sum of one penny in the pound upon the annual value of the property in such borough rateable to a borough rate : Provided always, that nothing in this Act shall interfere with the operation of the Act twenty-eighth and twenty-ninth *Victoria*, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in the city of *Oxford*.

In boroughs meeting to be called at the request of ten ratepayers.

III. The public meeting mentioned in section 4 of the said Public Libraries Act, 1855, shall be called either on the request of the town council, or on the request in writing of ten ratepayers residing in the borough.

Parishes adjoining a borough, &c. may unite in adopting Act.

IV. Any parish, of whatever population, adjoining any borough, district, or parish which shall have adopted or shall contemplate the adoption of the said Public Libraries Act, 1855, may, with the consent of more than one half of the ratepayers thereof present at a meeting to be convened in manner directed by the said Act with reference to

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(*d*) See 18 & 19 Vict. c. 70, *ante*, p. 665, and 34 & 35 Vict. c. 71, and 40 & 41 Vict. c. 54, *post*.

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meetings of ratepayers, and with the consent also of the town council of such borough, or the board of such district, or the commissioners of such parish, as the case may be, determine that such adjoining parish shall for the purposes of the said Act form part of such borough, district, or parish, and thereupon the vestry of such adjoining parish shall forthwith appoint three ratepayers commissioners for such parish, one-third of whom shall go out of office and the vacancies be filled up as provided by the said Act with respect to the commissioners of a parish, and such commissioners for the time being shall for the purposes of the said Act be considered as part of such town council, board, or commissioners, as the case may be; and the expenses of calling the meeting, and the proportion of the expenses of such adjoining parish of carrying the said Act into execution, shall be paid out of the poor rates thereof to such person as the commissioners of the said adjoining parish shall appoint to receive the same.

A majority of one-half of the ratepayers may adopt Act.

V. The majority necessary to be obtained for the adoption of the said Act shall be more than one-half of the persons present at the meeting instead of two-thirds of such persons as now required.

Act may be adopted whatever amount of population.

VI. The Public Libraries Act (1855) shall be applicable to any borough, district, or parish of whatever population.

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X. (*a*).

Short title.

XI. This Act may be cited as the Public Libraries Amendment Act (*England* and *Scotland*), 1866, and shall be taken to be part of the said Public Libraries Act, 1855, and shall be construed accordingly.

THE LABOURING CLASSES DWELLING HOUSES ACT, 1867.

(30 Vict. Cap. 28) (*b*).

An Act to amend "The Labouring Classes Dwellings Acts, 1866."

[17th June, 1867.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as "The Labouring Classes Dwelling Houses Act, 1867."

(*a*) This section is repealed, and the provisions of 47 & 48 Vict. c. 37, s. 3, *post*, p. 989, substituted.

(*b*) See 14 & 15 Vict. c. 34, *ante*, p. 652, and 29 Vict. c. 28, *ante*, p. 690.

II. In the fourth section of "The Labouring Classes Dwelling Houses Act, 1866" (*b*), the words "Land or Dwellings for the purposes of which the advance is made," and the twelfth section of "The Labouring Classes Lodging Houses and Dwellings Acts (*Ireland*) 1866," the words "Lands, Buildings, or Premises for the purpose of which such advance shall be made," shall respectively be construed to include any land, buildings, or premises held together with and for the same estate and interest as the lands, buildings or premises upon which the money advanced is to be expended under the provisions of the said Acts respectively.

Defining meaning of certain terms in 29 & 30 Vict. cc. 28 and 44.

III. In the case of an advance under the provisions of either of the said Acts to a company or society, any part of whose capital remains uncalled up or unpaid, if shall be lawful in *England* for the Public Works Loan Commissioners, and in *Ireland* for the Public Works Commissioners, to dispense with a mortgage of such capital remaining uncalled up or unpaid, or of such part thereof as they may think fit.

In case of advances to company, part of whose capital is unpaid, loan commissioners may dispense with mortgage.

THE ARTIZANS AND LABOURERS DWELLINGS ACT, 1868.

(31 & 32 Vict. Cap. 130) (*c*).

An Act to provide better Dwellings for Artizans and Labourers.

[31st July, 1868.]

Whereas it is expedient to make provision for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead thereof: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. In citing this Act it shall be sufficient to use the words "The Artizans and Labourers Dwellings Act, 1868."

Short title

II. (*d*).

III. The following words and expressions have in this Act the following meanings, unless excluded by the subject or context; (that is to say),

Interpretation of terms:

The word "street" includes any court, alley, street, square, or row of houses:

"Street" and "square:"

(*b*) *Ante*, p. 690.

(*c*) This Act is to be executed by urban authorities. See the Public Health Act, 1875, section 10, *ante*, p. 22. It is amended by several subsequent statutes which are set out, *post*. They are 42 & 43 Vict. c. 64; 43 Vict. c. 8; and 45 & 46 Vict. c. 54. See also the Acts relating to the Labouring Classes Lodgings and the Artizans Dwellings Acts in this Appendix.

(*d*) Section 2 was repealed by 42 & 43 Vict. c. 64, s. 13.

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"Premises:" The word "premises" means any dwelling house or inhabited building, and the site thereof, with the yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith :

"Owner:" The expression "owner," in addition to the definition given by the Lands Clauses Act, shall include all lessees or mortgagees of any premises required to be dealt with under this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired :

"Person:" "Person" shall include a body of persons, corporate or unincorporate :

"Quarter sessions:" "Quarter sessions" shall include general sessions, and in *Ireland* shall mean, in towns and boroughs where there are separate quarter sessions, the quarter sessions of said boroughs and towns, and in boroughs where there are no separate quarter sessions, the quarter sessions of the divisions of the courts in which such towns or boroughs shall be situate :

"Officer of health:" "Officer of health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any Act of Parliament (*a*) :

"Local officer," &c.: In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority, local court, magistrate, or officer having jurisdiction in that place within which are situate the premises or other subject matter or any part thereof to which such reference applies :

"The metropolis:" "The metropolis" shall not include the city of *London* or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works :

"Borough" in England: "Borough" in *England* shall mean any place for the time being subject to the Act passed in the session holden in the fifth and sixth years of the reign of King *William* the Fourth, chapter seventy-six, intituled *An Act to provide for the Regulation of Municipal Corporations in* England *and* Wales :

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IV. (*b*).

Officer of health to report as to condition of streets. V. If in any place to which this Act applies (*c*) the officer of health find that any premises therein (*d*) are in a condition or state dangerous to health so as to be unfit for human habitation, he shall report the same in manner hereinafter provided to the local authority.

(*a*) See the Public Health Act, 1875, section 191, *ante*, p. 222, as to the medical officer of health. See also 42 & 43 Vict. c. 64, s. 3, *post*.

(*b*) Section 4 was repealed by the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 11.

(*c*) See 42 & 43 Vict. c. 64, s. 2, *post*, as to the places to which the Act applies and the local authorities therein.

(*d*) Or in some cases in proximity to such premises. See 45 & 46 Vict. c. 54.

Officer of health to deliver copies of report to clerk of local authority, who shall refer the same to a surveyor, &c.

VI. Every report made under this Act by the officer of health shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof, and if such evil is occasioned by defects in any premises, whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished.

Local authority to cause copies of reports to be given to owner, who may object to the same, and to prepare plan and specification of required works.

VII. Upon receipt of the report of the surveyor and engineer the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall cause to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Clerk of local authority to give notice to owner of plan, &c., of required works having been prepared.

VIII. The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge: and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority, any objection which he may entertain to the said plan, specification, and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan, specification, and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

Persons aggrieved by order of local authority may appeal against the same.

IX. Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the court of quarter sessions held next after the making of the said order, but the appellant shall not be heard in support of the appeal unless, within one calendar month after the making of the order appealed against, he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as may be awarded by the court or any adjournment thereof; and the

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court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the court in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided,—

First, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the court shall, at the request of either party, state the facts specially for determination, in *England* or *Ireland* of Her Majesty's Court of Queen's Bench, or in *Scotland* of either division of the Court of Session, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or by petition, into the said Courts of Queen's Bench or to the Court of Session respectively:

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

Owner may appeal where decision of local authority is against him.

X. If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal, and a statement in writing of the ground thereof, to the person or persons, or to the parish or district, alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district, may appear before the court, and be heard against his or their alleged liability.

Where local authority decide in favour of owner, reports and notices to be sent to parties liable.

XI. If the local authority shall decide in favour of the objection of the owner of the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

On representation by householders that disease exists in any house, officer of health to inspect and report.

XII. If and whenever any four or more householders living in or near to any street by writing under their hands represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

XIII. In the event of the local authority declining or neglecting for the space of three calendar months after receiving such report to take any proceedings to put this Act in force, the householders who signed such representation may address a memorial to the Secretary of State stating the circumstances, and asking that an inquiry be made, and upon receipt of such memorial the said Secretary of State may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

If local authority neglect to enforce Act, Secretary of State may compel it to proceed.

XIV. Within three calendar months after the service on the owner of the order by the clerk of the local authority, or, in the case of appeal, within one calendar month after the order of quarter sessions, or, in the event of a further appeal, within one calendar month after the order of the court of final appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall so signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Owner to signify to clerk of local authority whether he is willing to execute specified works.

XV. Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by this Act required to be served on him to the owner, or for him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Service of notice on owner whose name and residence are known.

XVI. Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Service of notice on owner whose name or residence is not known.

XVII. Every notice required to be given by the clerk of the local authority by this Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

Notices to be signed by the local authority.

XVIII. The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall, within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as

Local authority to require owners to execute works as in specification.

Proceedings of local authority in case owners neglect.

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the case may seem to them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification (*a*).

Provision in case local authority themselves execute the works.

XIX. Where the local authority themselves execute the works, they may apply to the court of quarter sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs, charges, and expenses that have been incurred by such authority in or about the execution of such works, including the costs of obtaining the order ; and the court of quarter sessions, when satisfied of the amount so expended, shall make an order accordingly, charging on the premises the amount of such costs, charges, and expenses, together with interest at the rate of four pounds *per cent. per annum*, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at four *per centum*, and having priority over all other estates, incumbrances, and interests whatsoever, and the local authority shall, for the purpose of obtaining satisfaction of the moneys so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-five.

Local authority to pay compensation when total demolition required.

XX. If the requirements of the order involve the total demolition, and not the improvement of the premises specified therein, the owner shall, within three months after service of the order, proceed to take down and remove the premises, and if such owner fail therein, then the local authority shall proceed to take down and remove the same ; and the local authority shall sell the materials, and, after deducting the expenses incident to such taking down and removal, pay over the balance of moneys, if any, to the owner.

Determination of tenancies.

XXI. Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.

Remedies of owner for breach of covenant, &c., not to be prejudiced.

XXII. Provided always, that nothing in this Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, nonobservance, or nonperformance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority ; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of this Act, such entry or taking possession shall not affect his right to avail himself of any such breach, nonobservance, or nonperformance that may have occurred prior to his so taking possession.

(*a*) The owner may now require the local authority to purchase the premises. See 42 & 43 Vict. c. 64, s. 5, *post*.

Owner instead of effecting improvements may take down premises.

XXIII. If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house, building, or erection, as the case may require; and and in the event of noncompliance with such order the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section (*b*).

Application may be made to justices where more than one owner of premises included in order under Act, and any one owner neglects to comply with such order.

XXIV. When there are two or more owners of any premises, and it appears to any two justices in petty sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their satisfaction to bring the premises into conformity with such order, to make an order empowering the applicant forthwith to take possession of the premises and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on non-compliance by such last-mentioned applicant, with his undertaking it shall be lawful for the justices to make a like order in favour of any other owner.

Grant of annuity to owner on completion of works.

XXV. Where any owner has completed any works required to be executed by a local authority in pursuance of this Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expenditure incurred by him in executing such works, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority when satisfied that the owner has duly executed such works, shall make a charging order accordingly.

The annuity charged shall be a sum of six pounds for every 100*l.* of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under this Act shall be made according to the form marked A. in the second schedule hereto annexed, or as near thereto as the circumstances of the case will admit.

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner.

(*b*) He may also require the local authority to purchase the premises. See the last note. By 42 & 43 Vict. c. 64, s. 8, *post*, this section is to apply to the site of any premises purchased by a local authority which the owner has elected to retain subject to the provisions of that Act. And see 45 & 46 Vict. c. 8, sub-sect. (7).

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Incidence of charge.

XXVI. Every annuity created by a charging order under this Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorizing advances of public money ; and where more annuities than one are chargeable under this Act on any premises, such annuities shall, as between themselves, take order according to their respective dates.

Charges recoverable as rentcharges in lieu of tithes.

XXVII. Every annuity charged on any premises by a charging order under this Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

An order to be evidence of compliance with Act.

XXVIII. An order made in pursuance of this Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices, acts, and proceedings by this Act directed with reference to or consequent on the obtaining such order, or the making such charge, having been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto.

Registry of charging order on premises in Middlesex and Yorkshire.

XXIX. Every charging order made in pursuance of this Act relating to premises in *Middlesex* and *Yorkshire* shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of this Act ; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of ten shillings for filing and recording the same ; and every charging order made in pursuance of this Act relating to premises in *Scotland* shall be recorded in the appropriate register of sasines.

Assignment of charge.

XXX. The proprietor of any charge may, by deed under seal, stamped with the same *ad valorem* stamp as if it were an assignment of a charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person ; and on such assignment being executed the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed ; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any assignment of a charging order may be in the form marked B. in the schedule hereto, or in any other convenient form.

As to expenses of local authority.

XXXI. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of a special local rate, not exceeding twopence in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

Power to public works loan

XXXII. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853 (*a*), may, if they think fit, lend to any

(*a*) Repealed by the Public Works Loans Act, 1875, *post.*

local authority, and any local authority may borrow from the said commissioners, such sums as the said authority may require for the purposes of this Act, but the amount of every loan shall be sanctioned by the Lords Commissioners of the Treasury.

commissioners to advance moneys to local authority.

XXXIII. Any summons, notice, writ, or other proceeding at law, or in equity or otherwise, in relation to carrying into effect the objects and purposes of this Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Service of notice on the local authority.

XXXIV. Any notice, demand, or other written document served by the local authority for the purposes of this Act shall be signed by the clerk of the local authority.

Notices served by local authority to be signed by the clerk.

XXXV. Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by this Act required or authorized to do, every person so offending shall for every such offence forfeit not exceeding twenty pounds.

Penalty for obstructing officer of health, &c. in execution of Act.

XXXVI. If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers, agents, servants, or workmen, from carrying into effect with respect to the premises any of the provisions of this Act, after notice of the intention so to do has been given to the occupier, or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority, and their officers, agents, servants, and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of this Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding twenty pounds: Provided that during any such failure by the occupier, the owner, unless assenting thereto, shall not be liable to the forfeiture.

Penalty for preventing execution of Act.

XXXVII. The local authority may appear before any judge, justices, borough magistrates, sheriff, or sheriff substitute, by their clerk, and any company or body corporate may appear before the said magistrate or magistrates by any member of their board of management.

Appearance of local authority.

XXXVIII. Penalties under this Act may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen *Victoria*, chapter forty-three, intituled *An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within* England *and* Wales *with respect to Summary Convictions and Orders*, or any Act amending the same (*b*).

Recovery of penalties.

* * * * *

(*b*) The only amending Acts are the Summary Jurisdiction Act, 1879 and 1884.

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Jurisdiction of certain magistrates

XLI. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: As to *England*, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the city of *London*, or any alderman of the said city, sitting alone or with others, at the *Mansion House* or *Guildhall*.

SCHEDULES.

First Schedule (*a*).

Second Schedule.

Form marked A.

The Artizans and Labourers Dwellings Acts, 1868.

County of , parish of , No.

Charging order.

Insert description of local authority.

The being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of pounds, payable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

Insert description of premises charged.

Schedule.

Form marked B.

Form of Assignment of Charge.

To be endorsed on Charging Order.

Dated the day of .

I, the within-named in pursuance of the Artizans and Labourers Dwellings Act, 1868, and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed)

(*a*) This schedule was repealed by 42 & 43 Vict. c. 64, s. 13.

THE LANDS CLAUSES CONSOLIDATION ACT AMENDMENT, 1869.

(32 & 33 VICT. CAP. 18.)

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

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WHEREAS it is expedient that the provisions contained in "The Lands Clauses Consolidation Act, 1845," should be amended:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.

I. Where in England, under "The Lands Clauses Consolidation Act, 1845," or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law (*b*); and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation.

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Short title. Construction of Acts.

IV. This Act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

(*b*) See 8 & 9 Vict. c. 18, s. 52, *ante*, which is thus extended to costs of arbitration. The decision of the master cannot be reviewed: see *Sandback Charity and North Staffordshire Railway Company In re*, 3 Q. B. D. 1.

THE GAS AND WATER FACILITIES ACT, 1870.

(33 & 34 Vict. Cap. 70) (*a*).

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Gas and Water Works, and for the supply of Gas and Water. [9th August, 1870.]

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Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

I. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870."

Interpretation of terms.

II. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same:

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority:

The term "The Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860.

Description of Cases within this Act.

Act to apply to certain cases.

III. This Act shall apply where powers are required for all or any of the purposes following:—

(1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any

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(*a*) Incorporated with the Public Health Act, 1875, by section 161, *ante*, p. 186, for the purpose of enabling a local authority to supply gas.

district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works or to manufacture and supply gas:

(2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water:

(3.) To raise additional capital necessary for any of the purposes aforesaid:

(4.) To enable two or more companies or persons duly authorized to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:

(5.) To authorize two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

Provisional Orders authorizing Gas and Water Undertakings.

By whom provisional orders authorizing undertakings may be obtained.

IV. Provisional orders authorizing any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company, companies, or person (*b*).

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any provisional order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any provisional order can be obtained, unless the Board of Trade (*c*) in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

(*b*) See the Public Health Act, 1875, ss. 161, 316. This word applies to the urban sanitary authority.

(*c*) The Local Government Board are substituted for the Board of Trade in respect of any gasworks established by an urban authority: see the Public Health Act, 1875, s. 161, *ante*, p. 186.

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Notices and deposit of documents by promoters as in schedule.

V. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows:—

(1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:

(2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part I. of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

(3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained:

(4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

VI. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.

Power for Board of Trade to

VII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or

modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a provisional order accordingly. make provisional order.

Every such provisional order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Every such provisional order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such provisional order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited. Form and contents of provisional order.

The costs of and connected with the preparation and making of each provisional order shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the provisional order. Costs of order.

VIII. When a provisional order has been made as aforesaid and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part IV. of the Schedule (B.) to this Act. Publication of provisional order as in schedule.

IX. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any provisional order which shall have been published as aforesaid, not later than the twenty-fifth of April (*a*) in any year, procure a bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; but until confirmation by Act of Parliament a provisional order under this Act shall not have any operation. Confirmation of provisional order by Act of Parliament.

If while any such bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming any provisional order under this Act shall be deemed a public general Act.

X. The provisions of the Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are Incorporation of general

(*a*) It is considered that this date applies to the publication of the order, and not to the introduction of the bill into Parliament.

Appndx.

Acts in provisional order.

expressly varied or excepted by any such provisional order, and except as to the following provisions, namely,—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a provisional order authorizes a gas undertaking the provisions of "The Gasworks Clauses Act, 1847" (*a*), shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

Where a provisional order authorizes a water undertaking the provisions of "The Waterworks Clauses Act, 1847," and of "The Waterworks Clauses Act, 1863" (*b*), shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act (*c*).

Cesser of powers at expiration of prescribed time.

XI. If any undertakers empowered by any provisional order under this Act to make works do not, within three years from the date of such provisional order, or within any shorter period prescribed therein, complete the works; or,

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the provisional order, the works are not substantially commenced; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the provisional order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

Gas rents and water rates in schedule.

XII. The undertakers empowered by any provisional order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such provisional order, rents and rates respectively not exceeding the sums specified in such provisional order, subject and according to the regulations therein specified.

Company not exempt from provisions of general Act.

XIII. Nothing in any provisional order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act,

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(*a*) 10 & 11 Vict. c. 15, *ante*, p. 575.
(*b*) 10 & 11 Vict. c. 17, *ante*, p. 587, and 26 & 27 Vict. c. 93, *ante*, p. 684.
(*c*) See also the Public Health Act, 1875, s. 316, *ante*, p. 367.

or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the provisional order. Appndx.

XIV. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of Her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connection with the Board of Trade shall be done by or in connection with such substituted department. Queen in council may substitute any department for Board of Trade for the purposes of this Act.

XV. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855. Act not to apply to metropolis.

SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
England and Wales.	
Boroughs (1.) - - - -	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (*d*).	The local board.

(1.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales" (*e*).

(*d*) See the Public Health Act, 1875, s. 313, *ante*, p. 366.

(*e*) Now the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50; see section 243, sub-sect. (3), of that Act.

SCHEDULE A.—*continued.*

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.
Scotland.	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act.	The police commissioners or trustees.
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The parochial board.
Ireland.	
The city of Dublin - - -	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the town council.
Towns corporate, with exception of Dublin.	The mayor, aldermen, and burgesses, acting by the town council.
Towns having commissioners under an Act made in the 9th year of the reign of George the Fourth, intituled "An Act to make provision for the Lighting, Cleansing, and Watching of Cities and Towns corporate and Market Towns in Ireland in certain cases."	The commissioners.
Towns having municipal commissioners under 3 & 4 Vict. c. 108.	The municipal commissioners.
Towns having town commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), or any Acts amending the same, or under any local Act.	The town commissioners.
Townships having commissioners under local Acts.	The township commissioners.

SCHEDULE B.

Provisional Orders.

Part I.

Advertisement in October or November of intended Application.

Appndx.

(1.) Every advertisement is to contain the following particulars :

1. The objects of the intended application.
2. A general description of the nature of the proposed new works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London*, *Edinburgh*, or *Dublin Gazette*, accordingly as the district is situate in England, Scotland, or Ireland.

Part II.

Deposit on or before 30th November.

(1.) The undertakers are to deposit—

1. A copy of the advertisement published by them.
2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.

Appndx.

3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England or Ireland, in the office of the clerk of the peace for every county, riding, or division; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

Part III.

Deposit on or before 23rd December.

(1.) The undertakers are to deposit at the office of the Board of Trade—

1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
2. A printed draft of the provisional order as proposed by the undertakers, with any schedule referred to therein.
3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:—

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the undertakers of [*short title of undertaking*]:
Showeth as follows;

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*]. Appndx.

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

PART IV.

Deposit and Advertisement of Provisional Order when made.

(1.) The undertakers are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

THE TRAMWAYS ACT, 1870.

(33 & 34 VICT. CAP. 78) (*a*).

An Act to facilitate the Construction and to regulate the Working of Tramways. [9th August, 1870.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Tramways Act, 1870." Short title.

(*a*) This Act gives to local boards important power with regard to tramways and tramway companies, and is, therefore, included in the Appendix. The subject belongs rather to the law of highways than to that of Public Health, and the notes are, therefore, confined to references to decided cases.

Appndx.

II. This Act shall not extend to Ireland.

Limitation of Act.

Interpretation of terms.

III. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part One of the Schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same:

The term "road authority" shall mean, in the districts specified in the table in Part Two of the Schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "The Lands Clauses Acts" means, so far as the provisional or derin which that term is used relates to England, the Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860:

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

Part I.

Provisional Orders authorizing the Construction of Tramways.

By whom provisional orders authorizing the construction of tramways may be obtained.

IV. Provisional orders authorizing the construction of tramways in any district may be obtained by—

(1.) The local authority of such district; or by—

(2.) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts:"

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Application for a provisional order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule A. to this Act annexed.

Appndx.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any provisional order can be obtained.

The Board of Trade may in certain cases dispense with the consent of local or road authority.

V. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade may, nevertheless, make a provisional order authorizing the construction of such tramway if they are satisfied, after inquiry, that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

Notices and deposit of documents by promoters as in schedule.

VI. The promoters intending to make an application for a provisional order shall proceed as follows :—

(1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement; and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both Houses of Parliament for the time being in force with respect to bills for the construction of tramways :

(2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained :

(3.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained :

All maps, plans, and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

VII. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the promoters may proceed with the application.

Power for Board of Trade to make provisional order.

VIII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a provisional order accordingly.

Appndx.

Form of contents of provisional order.

Every such provisional order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to subject to Parliament for confirmation in manner provided by this Act; but so that any such provisional order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct any tramway elsewhere than along or across a road, or upon land taken by agreement.

Regulations as to construction of tramways in towns.

IX. Every tramway in a town which is hereafter authorized by provisional order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorized by any provisional order to be so laid that for a distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one-third of the owners or one-third of occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway being so laid.

Nature of traffic on tramway and tolls to be specified in provisional order.

X. Every such provisional order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper.

Costs of order.

XI. The costs of and connected with the preparation and making of each provisional order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the provisional order (*a*).

Promoters to deposit 4*l.* per cent. on estimate in prescribed bank.

XII. After a provisional order is ready, and before the same is delivered by the Board of Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money.

Publication of provisional order as in schedule.

XIII. When a provisional order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part Four of the Schedule (B.) to this Act.

(*a*) These costs are to be taxed on the Chancery, and not on the Parliamentary, scale. *In re Morley*, L. R. 20 Eq. 17; 32 L. T. (N.S.) 524; 23 W. R. 532.

Confirmation of provisional order by Act of Parliament.

XIV. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a Bill to be introduced into either House of Parliament in relation to any provisional order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the provisional order, which shall be set out at length in the schedule to the bill; and until confirmation, with or without amendment, by Act of Parliament, a provisional order under this Act shall not have any operation.

If while any such bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein, the bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming a provisional order under this Act shall be deemed a public general Act.

Incorporation of general Acts in provisional order.

XV. The provisions of the Land Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.

Power of Board of Trade to revoke, amend, extend, or vary provisional order.

XVI. The Board of Trade on the application of any promoters empowered by a provisional order may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order, and until such confirmation such further provisional order shall not have any operation.

Power to authorize joint work.

XVII. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a provisional order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the provisional order may be adapted to the circumstances of the case.

Cesser of powers at expiration of prescribed time.

XVIII. If the promoters, empowered by any provisional order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

Appndx.

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the provisional order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by a special direction of the Board of Trade, and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

Local authority may lease or take tolls.

XIX. When a tramway has been completed under the authority of a provisional order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorized; or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorized; but nothing in this Act contained shall authorize any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry, if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar

months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control). Appndx.

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

How expenses to be defrayed.

XX. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a provisional order, and carrying into effect the purposes of such provisional order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the Board of Trade may, by the provisional order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses.

Such local authority may, for the purposes of such provisional order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above-mentioned power shall be subject to the following regulations:

(1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:

(2.) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

For the purposes of such incorporation, the terms "the special Act," and "the commissioners," shall be construed to mean respectively a provisional order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such provisional order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorized thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such provisional order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorized by such provisional order, such moneys shall be

Appndx.

applied by them to the purposes for which the local rate may be by them applied.

Metropolitan board may, for carrying provisional order into effect, create stock under Loans Act of 1869.

XXI. The Metropolitan Board of Works may, in order to raise money for the purpose of carrying into effect the purposes of any provisional order obtained by them, create additional stock, not exceeding in the whole three hundred thousand pounds, under "The Metropolitan Board of Works (Loans) Act, 1869," in like manner, and with the like sanction, in and with which they may create stock in order to raise money for the purposes of the Acts mentioned in the first schedule to that Act; and all the provisions of that Act shall apply as if that money were raised and that stock were created for the purposes of the last-mentioned Acts, with the exception that the money required for the purposes of any such provisional order may be borrowed by them in addition to the sum limited by section thirty-eight of "The Metropolitan Board of Works (Loans) Act, 1869."

Part II.

Construction of Tramways.

As to incorporation of Parts II. and III. of this Act with provisional order and special Acts.

XXII. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorized by any provisional order or Act of Parliament, and shall be incorporated with such provisional order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such provisional order or Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said provisional order or Act, and be construed therewith as forming one provisional order or Act, as the case may be.

"Special Act:"

XXIII. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of Parliament which shall be hereafter passed or any provisional order authorizing the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid:

"Promoters."

XXIV. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorized by special Act to construct a tramway.

Mode of formation of tramways.

XXV. Every tramway which is hereafter authorized by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be

opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner (*a*). Appndx.

Power to break up streets, &c.

XXVI. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorized, or any part or parts thereof respectively, may open and break up any road, subject to the following regulations:

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work:

2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority (*b*), unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:

3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence (*b*):

4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

(*a*) When the special Act directs compliance with deposited plans and sections, they are regarded as embodied in the statute. *Edinburgh Street Tramways Company* v. *Black*, L. R. 2 H. L. Sc. 336.

(*b*) See the note to section 26, *post.*

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Completion of works and reinstatement of road.

XXVII. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations; namely,

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:

2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:

3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of part of road where tramway is laid.

XXVIII. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair, with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned,

and the expense incurred by the road authority in so doing shall be repaid to them by the promoters (*a*). Appndx.

Road authority and promoters may contract for paving roads on which tramways are laid.

XXIX. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair (*b*).

Provision as to gas and water companies.

XXX. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after re-

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(*a*) The raising of sleepers and rails to the level of the road, or the raising of the stone packing to the level of the rails, is maintaining and keeping the road in good condition under this section, and does not require the superintendence of the road authority under section 26. *St. Luke's Vestry* v. *North Metropolitan Tramways Company*, 1 Q. B. D. 760; 35 L. T. (N.S.) 329.

(*b*) See *Howitt* v. *Nottingham, &c., Tramways Company, ante*, p. 141.

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ceiving not less than forty-eight hours notice for that purpose, which notice the promoters are hereby required to give:

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct:
3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs:
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas:
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted.

For protection of sewers, &c.

XXXI. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or

officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works. Appndx.

Rights of authorities and companies, &c., to open roads.

XXXII. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say,)

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:
5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters:

Difference between

XXXIII. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or

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promoters and road authority, &c.

water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

Part III.

General Provisions.

Carriages.

Power for promoters to use tramways with flange-wheeled carriages, &c.

XXXIV. The promoters of tramways authorized by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail.

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorized by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

Licenses to use Tramways.

Licenses to use the tramway may in certain events be granted to third parties by the Board of Trade.

XXXV. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *primâ facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report

that the truth of the representation has been proved to his satisfaction, the board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorized by the special Act, with carriages to be approved by the board, subject to the following provisions, conditions, and restrictions; (that is to say,)

1. The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the board, if they upon inquiry think fit:
2. The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the board, having reference to the cause for granting the license, shall think right:
3. The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:
4. The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorized for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:
6. The Board of Trade may at any time after the granting of any license revoke, alter, or modify the same for good cause shown to them.

In default of payment of tolls licensee's carriages may be detained and sold.

XXXVI. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

Licensees to give account of passengers carried by them.

XXXVII. Every licensee shall on demand give to an officer or servant authorized in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licensees not giving account of passengers carried liable to penalty.

XXXVIII. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Disputes as to amount

XXXIX. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the

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of toll to be settled by justice.

charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices, and in Scotland by the sheriff or two justices, and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.

Owners of carriages liable for damage done by their servants.

XL. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices, and in Scotland before the sheriff or two justices, either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds.

Discontinuance of Tramways.

Tramways to be removed in certain cases.

XLI. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade, the said board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of Trade, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorized officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Insolvency of Promoters.

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Proceedings in case of insolvency of promoters.

XLII. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Purchase of Tramways.

Future purchase of undertaking by local authority.

XLIII. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the Board of Trade, under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a provisional order under this Act, and in reference to the same they shall be deemed to be the promoters.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in

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which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any provisional order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may by provisional order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such provisional order shall be confirmed in like manner as a provisional order under the authority of Part I. of this Act, and until such confirmation such provisional order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their district.

Power of sale.

XLIV. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorized.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

Tolls.

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Tolls, &c.

XLV. The promoters or lessees of a tramway authorized by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorized to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

Bye-laws.

Bye-laws by local authority.

XLVI. Subject to the provisions of the special Act authorizing any tramway and this Act,

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters:

The rate of speed to be observed in travelling upon the tramway:

The distances at which carriages using the tramway shall be allowed to follow one after the other:

The stopping of carriages using the tramway:

The traffic on the road in which the tramway is laid.

Promoters may make certain regulations.

The promoters of any tramway and their lessees may from time to time make regulations,—

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them:

For regulating the travelling in or upon any carriage belonging to them (*a*).

And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws, and make new bye-laws, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect.

Notice of the making of any bye-law under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the Schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such bye-law shall be disallowed by he Board of Trade.

No such bye-law shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such bye-law shall have been laid before the board, and a true copy of every such proposed bye-law shall, not less than two calendar months before such bye-law shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

(*a*) A bye-law requiring payment of a fare when demanded, though before completion of journey, is valid. *Egginton* v. *Pearl*, 33 L. T. (N.S.) 428; as to amount of fares, see *Edinburgh Street Tramways Company* v. *Torbain*, 3 App. Cas. 58.

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Penalties may be imposed in bye-laws.

XLVII. Any such bye-law may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues; but all bye-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

Power to local authority to license drivers, conductors, &c.

XLVIII. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages (*a*), and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connection therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority.

Offences.

Penalty for obstruction of promoters in laying out tramway.

XLIX. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for wilful injury or obstruction to tramways, &c.

L. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

Penalty on passengers practising frauds on the promoters.

LI. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wil-

(*a*) As to the confirmation of these regulations, see 47 Vict. c. 12, *ante*, p. 468, which abrogates the effect of the case of *Wallasey Tramway Company* v. *Wallasey Local Board*, 47 J. P. 821.

fully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings.

Transient offenders.

LII. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant, until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the tramway.

LIII. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Penalty for persons using tramways with carriages with flange wheels, &c.

LIV. If any person (except under a lease from or by agreement with the promoters, or under license from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds (*b*).

Miscellaneous.

Promoters or lessees to be responsible for all damages.

LV. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries (*c*).

Recovery of tolls, penalties, &c.

LVI. All tolls, penalties, and charges under this Act, or under any bye-law made in pursuance of this Act, may be recovered and enforced as follows: in England before two justices of the peace in manner

(*b*) A contrivance whereby a small disc might be let down into the groove of the rail, and thus operate as a flange, was held to be within this section: *Cottam* v. *Guest*, 6 Q. B. D. 70; 50 L. J. Q. B. 174; 29 W. R. 305; 45 J. P. 95.

(*c*) See *Howitt* v. *Nottingham Tramways Company*, *ante*, p. 141.

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directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same, and in Scotland before the sheriff or two justices as penalties under the Railways Clauses Consolidation (Scotland) Act, 1845.

Right of user only.

LVII. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof.

Arrangements between turnpike road trustees and promoters.

LVIII. The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same may, with the approval of the Board of Trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreement from time to time.

Reservation of rights of owners, &c., of mines.

LIX. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reserving powers of street authorities to widen, &c., roads.

LX. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Power for local or police authorities to regulate traffic in roads.

LXI. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of right of public to use roads.

LXII. Nothing in this Act or in any bye-law made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.

Regulating inquiries before referee appointed by the Board of Trade.

LXIII. Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions:

1. The inquiry shall be held in public before an officer to be appointed

in that behalf by the board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him: Appndx.

2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced:

3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit:

4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:

5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry:

6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury:

7. The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

Rules for carrying Act into effect.

LXIV. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters (*a*):

1. The proceedings to be had before the board under this Act:

2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits:

3. The plans and sections of any works to be deposited by promoters under this Act:

(*a*) Rules have been made under this section. As to the construction of such rules, see *In re Bradford Tramways Company*, 4 Ch. D. 18; *In re Lowestoft, Yarmouth and Southwold Tramways Company*, 6 Ch. D. 484; *In re Tynemouth Borough Tramways Company*, 33 L. T. (N.S.) 8.

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4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

SCHEDULE A.

Part I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
England and Wales.		
The city of London and the liberties thereof.	The mayor, aldermen, and commons of the city of London.	The consolidated sewers rate.
The metropolis (1.) -	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.) - -	The mayor, aldermen, and burgesses, acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.

Notes.

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

(2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales" (*a*).

(*a*) Now the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50; see section 242 of that Act.

SCHEDULE A.—*continued.* Appndx.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (*b*).	The local board - -	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.
	SCOTLAND.	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees.	The town council.	The prison assessment or police assessment, as the local authority shall resolve.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act.	The police commissioners or trustees.	

(*b*) Now the Public Health Act, 1875; see section 313 of that Act.

SCHEDULE A.—*continued.*

Appndx.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The road trustees having the management of any road on which a tramway is proposed to be constructed.	The tolls, duties, and assessments leviable by the road trustees.

PART II.

	Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.	
	Parishes within the metropolis (1.) mention in Schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.	
	Districts within the metropolis (1.) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.	

Note (1.)—The term "Metropolis" has in this Part the same meaning as in Part I. of this schedule.

PART III.

Approval of Application by Local Authority for a Provisional Order.

Appndx.

The approval of any intended application for a provisional order by a local authority shall be in manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter. Where any such resolution relating to the metropolis as the same is defined in Part I. of this schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order, when made, will be obtainable as hereinafter provided.

Appndx.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district is situate in England or Scotland.

Part II.

Deposit on or before 30th November.

(1.) The promoters are to deposit :—

1. A copy of the advertisement published by them.
2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

Part III.

Deposit on or before 23rd December.

(1.) The promoters are to deposit at the office of the Board of Trade—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
2. A printed draft of the provisional order as proposed by the promoters, with any schedule referred to therein.
3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement ; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*] : Showeth as follows ;

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement :

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.
C. D.
Promoters.

Part IV.

Deposit and Advertisement of Provisional Order when made.

(1.) The promoters are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

SCHEDULE C.

Part I.

Notice and Deposit of Lease by Local Authority.

Appndx.

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

Part II.

Notice of Bye-laws.

Within one month after the making of any bye-law notice of the making of the same, and a copy of such bye-law, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such bye-law; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.

THE GASWORKS CLAUSES ACT (1847) AMENDMENT.

(34 & 35 Vict. Cap. 41) (*a*).

An Act to amend the Gasworks Clauses Act, 1847. [13th July, 1871.]

Appndx.

WHEREAS it is expedient that the provisions contained in the Gasworks Clauses Act, 1847, should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say),

10 & 11 Vict. c. 15, and this Act to be construed together

I. The Gasworks Clauses Act, 1847, and this Act, shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act.

Short title.

II. This Act may be cited as "The Gasworks Clauses Act, 1871."

Application of Act.

III. The provisions of this Act shall apply to every gas undertaking authorized by any special Act hereafter passed, or by any provisional order made under the authority of the Gas and Water Works Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or provisional order; and every such special Act and provisional order is in this Act included in the term "the special Act" (*b*).

Interpretation of terms.

IV. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act, or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by a statute.

General Provisions.

Prohibition against erecting gasworks elsewhere

V. The undertakers shall not manufacture gas, or any residual products, except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in

(*a*) See 10 & 11 Vict. c. 15, note (*b*), *ante*, p. 575.

(*b*) The effect of sections 1 and 3 is that this Act is incorporated with special Acts passed before 1871 which incorporate the Act of 1847. *Commercial Gas Company* v. *Scott*, L. R. 10 Q. B. 400; *Dudley Gaslight Company* v. *Warmington*, 50 L. J. M. C. 69; 44 L. T. (N.S.) 475; 29 W. R. 680; 45 J. P. 649.

Appndx.

than on lands specified in schedule.

writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

Sale of superfluous lands.

VI. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorized to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of "The Lands Clauses Consolidation Act, 1845," sections 128 to 132 (both sections inclusive), shall apply to any such sale (*a*); and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Receipts of guardians, &c., to be sufficient discharge.

VII. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same.

For appointment of receiver.

VIII. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England and Ireland by the appointment of a receiver, and in Scotland by the appointment of a judicial factor; and in order to authorize the appointment of a receiver or judicial factor in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than in the whole one thousands pounds, or such sum as shall be specified in the special Act.

Undertakers not exempted from indictment.

IX. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

Power to take easements, &c., by agreement.

X. Persons empowered by "The Lands Clauses Consolidation Act, 1845," to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act and of "The Lands Clauses Consolidation Acts Amendment Act, 1860," grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easements, rights, or privileges as aforesaid (*b*).

Supply of Gas to Owners and Occupiers of Premises.

Undertakers to furnish sufficient

XI. The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main of the undertakers, or such other distance as may be prescribed,

(*a*) See these sections, *ante*, p. 542.
(*b*) See the Lands Clauses Act, 1845, section 7, *ante*, p. 507.

give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,)

supply of gas to owners and occupiers within the limits of the special Act.

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence;

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply; and

Give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues.

Quality of gas.

XII. The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.

Undertakers may require consumers to use meters.

XIII. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of an Act passed in the session of Parliament held in the twenty-second and twenty-third years of the reign of Her present

Appndx.

Majesty, intituled "An Act for regulating Measures used in Sales of Gas," and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers: Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

Undertakers to supply meters.

XIV. The undertakers shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them: Provided always, that such owner or occupier shall, if required, previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same.

Meters not to be connected or disconnected without notice.

XV. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings (*a*).

Nature and amount of security.

XVI. Where any owner or occupier is required by the special Act to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Consumer to keep his meter in proper order.

XVII. Every consumer of gas supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer.

Power to the undertakers to let meters.

XVIII. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the

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(*a*) As to the recovery of this penalty, see section 44, *post*.

hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas (*b*), and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be.

Undertakers to keep meter let for hire in repair.

XIX. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

Register of gas meters to be *primâ facie* evidence.

XX. The register of the meter shall be *primâ facie* evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers: Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Power to enter buildings for ascertaining quantities of gas consumed.

XXI. Any officer appointed by the undertakers may at all reasonable times enter any building or land lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

Power to remove meter and fittings.

XXII. In all cases in which a consumer of gas supplied by the undertakers ceases to require a supply of such gas, and in all cases in which the undertakers are authorized to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents or workmen, after twenty-four hours notice in writing, under the hand of the secretary or other properly authorized officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent of the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

Recovery of charges for gas.

XXIII. In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person,

(*b*) See section 23, *post*; see also sections 39, 41.

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requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable (*a*).

Supply of Gas to Local Authorities.

Supply and price of gas to public lamps.

XXIV. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district.

As to consumption of gas supplied to the public lamps.

XXV. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district or the undertakers, and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers shall, for securing uniformity of consumption between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the meters attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

Governors for street lamps.

XXVI. In case gas is supplied to the public lamps in any district by the undertakers, they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same.

(*a*) The sum due will now be recoverable as a civil debt under the Summary Jurisdiction Act, 1879, sections 6, 35. As to the effect of liquidation or bankruptcy on the right to distrain, see *Ex parte Hill in re Roberts*, 6 Ch. D. 63; 46 L. J. Bk. 116; 37 L. T. (N.S.) 46; 25 W. R. 784.

XXVII. Any difference which may arise between the undertakers and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration (*b*). For settlement of differences between the undertakers and the local authority.

Testing of Gas.

XXVIII. The undertakers shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for the purposes following, or such of them as may be prescribed by the special Act; that is to say,— Testing place.

1. For testing the illuminating power of the gas supplied:
2. For testing the presence of sulphuretted hydrogen in the gas supplied.

The said apparatus shall be in accordance with the regulations prescribed in Part I. of the Schedule A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power and purity of the gas supplied by the undertakers, and the undertakers shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

XXIX. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may after the passing of the special Act from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power and purity of the gas supplied by the undertakers, on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September, both inclusive. Appointment and powers of gas examiners.

XXX. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers, not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power and purity of the gas supplied by them. Two justices may appoint gas examiner.

XXXI. The undertakers may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing. Representation of undertakers.

(*b*) See the Act, 8 Vict. c. 16, sections 128—134, *ante*, p. 544.

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Mode of testing.

XXXII. Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Schedule A. to this Act annexed.

Report of gas examiner.

XXXIII. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power or purity of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers, and such report shall be receivable in evidence.

Access to testing place.

XXXIV. The undertakers shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act, and their agents, access to the testing place, and shall afford all facilities for the proper execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority or to the persons making the application.

Accounts.

Accounts, &c.

XXXV. The undertakers shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (*a*).

Penalties.

Penalty for failure to supply gas.

XXXVI. Whenever the undertakers neglect or refuse to give a supply of gas to any owner or occupier of premises within the limits of the special Act entitled to the same, under such pressure as is prescribed, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (*b*).

Whenever the undertakers neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the

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(*a*) See *Dudley Gaslight Company* v. *Warrington*, *ante*, p. 747.

(*b*) A company who improperly cut off a supply of gas are liable under this section. *Commercial Gas Company* v. *Scott*, L. R. 10 Q. B. 400.

provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default. Appndx.

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers is under less pressure, of less illuminating power, or of less purity than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum not exceeding twenty pounds as the justices shall determine.

Penalties imposed on the undertakers for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts. Penalties not cumulative.

XXXVII. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be paid to the person making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices. Cost of experiment to be paid according to event.

XXXVIII. Every person who wilfully, fraudulently, or by culpable negligence injures, or suffers to be injured any pipes, meter, or fittings belonging to the undertakers, or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the custody or control of the consumer, shall be *primâ facie* evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter. Penalty for injuring meters.

Recovery of Gas Rents.

XXXIX. In case any consumer of gas supplied by the undertakers leaves the premises where such gas has been supplied to him without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the Incoming tenants not liable to pay arrears of gas rents, &c.

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payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears (*a*).

Recovery of rents, &c.

XL. If any person supplied with gas or with any gas meter or fittings by the undertakers neglects to pay to the undertakers the rent due for such gas or the rent or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act.

Recovery of sums due to undertakers.

XLI. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers, the undertakers may recover the same, with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum.

Legal Proceedings.

Contents of summons or warrant.

XLII. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in the schedule thereto, several names and several sums.

Warrant of distress shall include costs.

XLIII. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Summary proceedings for offences, penalties, &c.

XLIV. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by "The Gasworks Clauses Act, 1847," with respect to the recovery of penalties.

Service of notices by undertakers.

XLV. Every notice which the undertakers are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left at his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates.

Liability to gas rent not to disqualify justices from acting.

XLVI. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act.

(*a*) See *Gaslight and Coke Company* v. *Meade*, 45 L. J. M. C. 71; 33 L. T. (N.S.) 729.

SCHEDULE A.

Part I.

Regulations in respect of Testing Apparatus.

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1. *The apparatus for testing the illuminating power of the gas* shall consist of the improved form of Bunsen's photometer, known as Letheby's open 60-inch photometer, or Evans' enclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure gauge, and balance.

The burner to be used for testing the gas shall be such as shall be prescribed.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

2. *The apparatus—*

(*a.*) *For testing the presence in the gas of sulphuretted hydrogen.*—A glass vessel containing a strip of bibulous paper moistened with a solution of acetate of lead, containing sixty grains of crystallized acetate of lead dissolved in one fluid ounce of water.

Part II.

Rules as to Mode of Testing Gas.

I. *Mode of Testing for Illuminating Power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be 120 grains each per hour. Before and after making each set of ten observations of the photometer the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour he shall make and record the calculations requisite to neutralize the effects of this difference.

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.

II. *Mode of Testing.*

(*a.*) *For sulphuretted hydrogen.*—The gas shall be passed through the glass vessel containing the strip of bibulous paper moistened with the solution of acetate of lead for a period of three minutes, or such longer period as may be prescribed; and if any discolouration of the test paper is found to have taken place, this is to be held conclusive as to the presence of sulphuretted hydrogen in the gas.

SCHEDULE B.

Form of Annual Accounts.

The Gas Company.

Year ending 31st December, 18 .

A.—Statement of Share Capital on the 31st December, 18 .

1. Description of capital.	2. Maximum Dividend authorized.	3. Number of Shares issued.	4. Nominal Amount of Share.	5. Called up per Share.	6. Total paid up.	7. Amount issued but not paid up.	8. Remaining to be issued.	9. Total Amounts authorized.

B.—Statement of Loan Capital on the 31st December, 18 .

1. Description of Loan (Mortgage, Bond, Debenture, Stock, &c.).	2. Rate per Cent. of Interest.	3. Total Amounts borrowed at 31st December, 18 .	4. Remaining to be borrowed.	5. Total Amounts authorized.

Total share capital paid up (see A.) - - - - £
Do. loan do. borrowed (see B.) - - - - £

Total capital received - - - - £

C.—Capital Account for the year ended 31st December, 18 .

——	Expenditure to 31st December 18 .	Expended this Year.	Total to 31st December 18 .
	£ s. d.	£ s. d.	£ s. d.
1. To expenditure to 31st December, 18 - - - - -			
Since that date.			
2. To lands acquired, including law charges - - - -			
3. „ new buildings, manufacturing plant, machines, storage works, and other structures connected with manufacture - - -			
4. „ new mains and service pipes (not being in place of old ones), including laying of same, paving, and other works connected with distribution - - -			
5. „ new meters (not in place of old ones), including fixing - -			
6. „ costs of promoting special Act -			
7. „ special items (if any) - -			
Total expenditure - - - -			
To balance of capital account - -			
£			

——	Certified Receipts, 31st December 18 .	Received during Year.	Total Receipts to 31st December 18 .
	£ s. d.	£ s. d.	£ s. d.
1. By ordinary shares of £ each			
2. „ ditto of £ each - -			
3. „ preference shares of £ each			
4. „ debenture stock - - -			
5. „ mortgages and bonds - -			
6. „ amount received in anticipation of calls - - -			
Total - - - - - - -			

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D.—Revenue Account, for the year ended 31st December, 18 .

To Manufacture of Gas.	£ s. d.	£ s. d.	By Sale of Gas.	£ s. d.	£ s. d.
1. Coals, including dues, carriage, unloading, and all expenses of depositing same on works -			1. Common gas (cubic feet), at / per 1,000 cubic feet - - - - -		
2. Purifying materials, oil, water, and sundries at works - - - - -			2. Cannel gas (cubic feet), at / per 1,000 cubic feet - - - - -		
3. Salaries of engineers, including chief engineer (if any), superintendents, and officers at works			3. Public lighting and under contracts - -		
4. Wages and gratuities at works - - -			4. Rental of meters - - - - -		
5. Repairs and maintenance of works and plant (including renewal of retorts), machines, apparatus, tools, materials, and labour £					
Less old materials sold - - - £			By Residual Products.		
To Distribution of Gas.			5. Coke, less labour and cartage - - -		
6. Salaries of surveyor, chief inspector, inspectors, assistant inspectors, and clerks in light office			6. Breeze ,, ,, - -		
7. Repair, maintenance, and renewal of mains, and of service pipes, including materials, laying and paving, and labour - -			7. Tar ,, ,, - - -		
8. Repairing, renewing, and refixing meters -			8. Ammoniacal liquor ,, - - -		
To Public Lamps.					
9. Lighting and repairing - - - -					
To Rents, Rates, and Taxes.			9. By rents - - - - - -		
10. Rents - - - - - -			10. By transfer fees - - - - -		
11. Rates and taxes - - - - -			By other item (if any) - - - -		
To Management.					
12. Directors' allowances - - - -					
13. Salaries of secretary, accountant, and clerks, office keepers, and messengers - -					
14. Collectors' commission or salaries - -					
15. Stationery and printing - - -					
16. General establishment charges and incidentals					
17. Auditor - - - - - - -					
To Law and Parliamentary Charges.					
18. Law - - - - - -					
19. Parliamentary (oppositions) - - -					
20. To depreciation fund for works on leasehold lands (if any) - - - - - - -					
21. To bad debts - - - - - - -					
To other items (if any) - - - - -					
Total expenditure - - - -			Total receipts - - £		
Balance carried to Profit and Loss Account, E.					

E.—Profit and Loss Account (net revenue) for the year ended 31st December, 18 .

Dr. *Cr.*

	£ s. d.		£ s. d.
1. To amount carried to Reserved Fund Account F. (if any), from profits of 18 . . .		1. By balance of net profit brought from last account (31st December, 18) .	
2. „ Interest on temporary loans, and moneys received in anticipation of calls . . .		2. „ Amount drawn from reserved fund (if any)	
3. „ Ditto on mortgages and bonds accrued to 31st December, 18		Less dividend paid for the half-year ended 31st December, 18 . . .	
4. „ Ditto on debenture stock to ditto . .		3. Balance brought from Revenue Account, D., being profit for year to December, 18 . .	
5. „ Half-year's dividend on 1st preferential to 30th June, 18 . . .		4. Interest on moneys deposited . . .	
6. „ Ditto, 2nd preferential to ditto . .			
7. „ Ditto on ordinary shares at per cent. .			
„ Balance of net profit to be carried to next account subject to half-year's dividends to 31st Dec., 18			
£		£	

F.—Reserved Fund Account for the year ended 31st December, 18 .

	£ s. d.		£ s. d.
1. Amount (if any) carried to Profit and Loss Account (E.) to make up deficiencies of dividends to 31st December, 18		1. By balance brought from last account . .	
2. Amount paid for extraordinary claim or demand (if any)		2. „ balance brought from Profit and Loss Account (E.)	
3. Amount of balance to be carried to next account .		3. „ interest on amount invested . . .	
£		£	

Like accounts must be given for depreciation fund for works on leaseholds, if any.

G.—Statement of Coals,

During the year ended 31st December, 18 .

Description of Coal.	In Store, 31st December, 18 .	Received during Year.	Carbonized or used during Year.	In Store, 31st December, 18 .
	Tons.	Tons.	Tons.	Tons.
Common				
Cannel				

H.—Statement of Residual Products,

For the year ended 31st December, 18 .

Description of Residual.	In Store, 31st December, 18 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st December, 18 . Estimated.
Coke—common, chaldron of 36 bushels					
„ cannel „ „					
Breeze „ „					
Tar, gallons					
Ammoniacal liquor, butts of 108 gallons.					

I.—General Balance Sheet,

On 31st December, 18 .

Dr. *Cr.*

	£ s. d.		£ s. d.
1. To Capital Account— Balance at credit thereof (Account C.) . .		1. By cash at bankers	
2. „ Profit and Loss Account— Balance at credit thereof (Account E.) . .		2. „ „ on deposit or at interest	
3. „ Reserved Fund— Balance at credit thereof (Account F.) . .		3. „ coals for stock on hand, 31st December, 18 .	
4. „ Depreciation Fund (for works on leasehold lands)— Balance at credit thereof (Account .) . .		4. „ coke and breeze . „ „	
5. „ Unpaid dividends		5. „ tar and other products „ „	
6. „ Interest accrued and unpaid on mortgages, bonds, and debenture stock, and other loans, to 31st December, 18		6. „ sundry stores . . „ „	
7. „ Sundry tradesmen and others, for amount due for coals, stores, &c., to 31st December 18 .		7. „ gas and meter rental; balance of this account due to the company on 31st December, 18 , less deposits and prepayments . . .	
8. „ Wages and Contingencies— Amount due to 31st December, 18 . .		8. „ coke and other residual „ „	
„ Other items (if any)		9. „ sundry accounts . „ „	
		„ special items (if any), including investments .	
£		£	

THE LOCAL GOVERNMENT BOARD ACT, 1871.

(34 & 35 Vict. Cap. 70) (*a*).

An Act for constituting a Local Government Board, and vesting therein certain functions of the Secretary of State and Privy Council concerning the Public Health and Local Government, together with the powers and duties of the Poor Law Board. [14th August, 1871.]

Appndx.

Whereas it is expedient to concentrate in one department of the Government as hereinafter provided the supervision of the laws relating to the public health, the relief of the poor, and local government:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

I. This Act may be cited as "The Local Government Board Act, 1871."

Establishment of Local Government Board.

Establishment of Local Government Board.

II. A board shall be established, to be called the Local Government Board, and from and after the establishment of such board the Poor Law Board shall cease to exist, and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament referring to the relief of the poor and any other Acts, or vested in or imposed on one of Her Majesty's principal Secretaries of State by the enactments in that behalf mentioned in the first part of the schedule annexed hereto, so far as such powers and duties relate to England (*b*), or vested in or imposed on Her Majesty's most honourable Privy Council by the enactments in that behalf specified in the second part of the said schedule, shall be transferred to and imposed on the said Local Government Board, and except as otherwise provided by this Act, shall be exercised and performed by such board in like manner and form, and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit.

Constitution of Local Government Board.

III. The Local Government Board shall consist of a president to be appointed by Her Majesty, and to hold office during the pleasure of Her Majesty, and of the following *ex officio* members, that is to say, the Lord President of Her Majesty's most honourable Privy Council, all Her Majesty's principal Secretaries of State for the time being, the Lord Privy Seal, and the Chancellor of the Exchequer.

(*a*) See 21 & 22 Vict. c. 97, *ante*, p. 675.

(*b*) See the additional powers transferred to the board by 35 & 36 Vict. c. 79, ss. 34-6, and preserved by 38 & 39 Vict. c. 55, Sched. V., Part III., *ante*, p. 444.

The Local Government Board shall be deemed to be established from and after the date of the first appointment of a president under this Act.

The Local Government Board may appoint in writing such secretaries, assistant secretaries, inspectors, auditors, clerks, messengers, and other officers as the board may, with the sanction of the Treasury, determine.

No payment shall be made in respect of their duties under this Act to the *ex officio* members of the Local Government Board, but there shall be paid out of moneys provided by Parliament to the president, secretaries, and other officers of the board such salaries as the Treasury may from time to time determine: Provided, that the appointment of any officer to a new office made by the Local Government Board in pursuance of this section shall be deemed to be temporary only until the salary of such office (*c*) has been provided for by Parliament.

President and one of the secretaries may sit in Parliament.

IV. The president and one of the secretaries of the Local Government Board shall at the same time be capable of being elected to and of voting in the Commons House of Parliament, and the office of president shall be deemed to be an office included in Schedule H. of the Representation of the People Act, 1867; in Schedule H. of the Representation of the People (Scotland) Act, 1868; and in Schedule E. of the Representation of the People (Ireland) Act, 1868.

Seal, style, and acts of Board.

V. The Local Government Board may adopt an official seal, and describe themselves generally by the style and title of "The Local Government Board," and, save as hereinafter provided, any act to be done or instrument to be executed by or on behalf of the Local Government Board may be done or executed in the name of that board by the president or by any member of the Local Government Board, or by a secretary or assistant secretary, if such secretary or assistant secretary is authorized to do or execute the same by any general order of the Local Government Board.

A rule, order, or regulation made by the Local Government Board shall be valid if it is made under the seal of the board, and signed by the president or one of the *ex officio* members of the board, and countersigned by a secretary or assistant secretary; and the production of such *primâ facie* evidence of any of the said rules, orders, or regulations as is required by the Documentary Evidence Act, 1868 (*d*), with respect to the rules, orders, or regulations of the Poor Law Board, shall, until the contrary is shown, be a sufficient proof that any such rule, order, or regulation of the Local Government Board was duly made (*e*).

Transfer of officers.

VI. All officers, clerks, and other persons employed in or about the execution of the powers and duties by this Act transferred to the Local Government Board shall, from and after the establishment of the Local Government Board, be attached to and under the control of the Local Government Board.

The officers, clerks, and persons so attached shall in other respects hold their offices and places upon the same terms and conditions, and

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(*c*) *Sic.*

(*d*) 31 & 32 Vict. c. 37; and see also the Documentary Evidence Act, 1882, 45 Vict. c. 9.

(*e*) See as to publication of their orders, 35 & 36 Vict. c. 79, s. 48, re-enacted in the Public Health Act, 1875, Sched. V., Part III., *ante*, p. 445.

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shall have the same powers, privileges, and immunities with respect to the performance of their duties as if this Act had not passed.

The Local Government Board may, by order, distribute the business to be performed under the Local Government Board amongst the several officers and persons transferred to the board by this Act in such manner as the Local Government Board may think expedient (*a*).

Construction of Acts and documents, and power of Local Government Board.

VII. In the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers and discharging the duties by this Act transferred to and imposed on the Local Government Board, the name of such board shall, according to circumstances, be deemed to be substituted for the Poor Law Board, one of Her Majesty's principal Secretaries of State (*b*), or Her Majesty's most honourable Privy Council, as the case may require; and any act or thing which might, if this Act had not passed, have been done by the Poor Law Board, or by one of Her Majesty's principal Secretaries of State, or by Her Majesty's most honourable Privy Council, so far as relates to the powers and duties hereby transferred, may be done by the Local Government Board.

Duplicate returns to be sent to Local Government Board.

VIII. Where under the Act, whether passed before or after the passing of this Act, any return relative to any rate, toll, tax, or due raised in England (other than such as is raised for the public revenue of the United Kingdom) is required to be sent to one of Her Majesty's Secretaries of State or any other department of the Government, a duplicate of such return shall in like manner be sent to the Local Government Board, and any person failing to send the same shall be subject to the like penalties as a person neglecting to send any return under the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter fifty-one (*c*).

(*a*) See also the re-enacted provisions of 35 & 36 Vict. c. 79, s. 37, *ante*, p. 445.

(*b*) See further 35 & 36 Vict. 79, s. 34, re-enacted, *ante*, p. 444, whereby the consent of the Local Government Board is substituted for that of other departments in the cases there stated.

(*c*) See the Local Taxation Returns Acts, 23 & 24 Vict. c. 51, *ante*, p. 677, and 40 & 41 Vict. c. 66, *post*; also the District Auditors Act, 1879, 42 & 43 Vict. c. 6, s. 3, *post*.

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SCHEDULE referred to in the foregoing Act (*d*).

PART I.

Powers and Duties of Secretary of State.

Subject.	Act.
Registration of Births, Deaths, and Marriages	6 & 7 Will. 4, c. 86. 7 Will. 4 & 1 Vict. c. 22.
Public Health	11 & 12 Vict. c. 63.
Local Government	21 & 22 Vict. c. 98. 24 & 25 Vict. c. 61. 26 & 27 Vict. c. 17.
Drainage. Sanitary Matters	28 & 29 Vict. c. 75. 29 & 30 Vict. c. 90. 30 & 31 Vict. c. 113. 31 & 32 Vict. c. 115. 32 & 33 Vict. c. 100.
Baths and Washhouses	9 & 10 Vict. c. 74. 10 & 11 Vict. c. 61.
Public Improvements	23 & 24 Vict. c. 30.
Towns Improvement	10 & 11 Vict. c. 34.
Artizans and Labourers Dwellings	31 & 32 Vict. c. 130.
Returns. Local Taxation	23 & 24 Vict. c. 51.
	And any Acts amending the said Acts, and conferring powers on the said Secretary of State.

PART II.

Powers and Duties of Privy Council.

Subject.	Act.
Prevention of Disease	11 & 12 Vict. c. 63. 18 & 19 Vict. c. 116. Sections one, three, five, and six of 21 & 22 Vict. c. 97. 22 & 23 Vict. c. 3. 23 & 24 Vict. c. 77. 29 & 30 Vict. c. 90. 31 & 32 Vict. c. 115.
Vaccination	30 & 31 Vict. c. 84.
	And any Acts amending the said Acts, and conferring powers on the said Privy Council.

(*d*) Several of these Acts are consolidated in the Public Health Act, 1875; the others are printed in this Appendix in so far as they concern local authorities.

THE PUBLIC LIBRARIES ACT (1855) AMENDMENT ACT, 1871.

(34 & 35 Vict. Cap. 71) (*a*).

An Act to amend the Public Libraries Act, 1855.

[14th August, 1871.]

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18 & 19 Vict. c. 70.

Whereas it is expedient to amend and extend the Public Libraries Act, 1855, hereinafter referred to as the "principal Act:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Local boards to put principal Act into execution.

I. Every local board, under the Public Health Act, 1848 (*b*), and the Local Government Act, 1858 (*b*), or either of them, is empowered, in like manner as a board under any Improvement Act, to adopt and carry into execution the principal Act.

Interpretation of terms.

II. For the purposes aforesaid, the following words in the principal Act shall have the following extended significations; viz., the word "board" shall mean any such local board as aforesaid; the words "improvement rate" shall mean the general district rate levied by any such board; the word "ratepayers" shall mean all persons assessed to and paying such general district rate; the word "district" shall mean the district in which such local board has authority to levy a general district rate; the term "Improvement Act" shall mean the Local Government Act, 1858.

Section 15 of recited Act not to apply to rates made by local boards.

III. So much of section fifteen of the principal Act as refers to the Towns Improvement Clauses Act, 1847, shall not apply to rates made by local boards under the principal Act; but nothing herein contained shall enable local boards to levy or expend for the purposes of the principal Act any greater sum in any year than one penny in the pound.

Provision as to borrowing by local boards for purposes of recited Act.

IV. For carrying into execution the principal Act, every such local board may borrow upon mortgage of the general district rate (*c*) or any separate rate to be levied under the principal Act; and such borrowing shall be effected in conformity with the provisions as to borrowing con-

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(*a*) See 18 & 19 Vict. c. 70, *ante*, p. 665; 29 & 30 Vict. c. 114, *ante*, p. 695; and 40 & 41 Vict. c. 54, *post*.

(*b*) Now the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366.

(*c*) See the Public Health Act, 1875, s. 233, *ante*, p. 270.

tained in the Local Government Act, 1858 (*d*), and the Acts incorporated therewith, in lieu of the provisions as to borrowing contained in the principal Act. Appndx.

V. This Act shall not apply to any district the whole or any part of which is within any municipal borough, or within the jurisdiction of commissioners under any Improvement Act. Not to apply to certain districts.

VI. This Act may be cited for all purposes as "The Public Libraries Act, 1855, Amendment Act, 1871." Short title.

THE PETROLEUM ACT, 1871.

(34 & 35 Vict. Cap. 105) (*e*).

An Act for the safe keeping of Petroleum and other substances of a like nature. [21st August, 1871.]

Whereas it is expedient to consolidate and amend the law relating to the safe keeping of petroleum and other substances of a like nature:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited as "The Petroleum Act, 1871." Short title of Act.

II. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter assigned to them; (that is to say,) Interpretation of certain terms in the Act.

The term "borough" means— "Borough:"

In England any place for the time being subject to the provisions of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same (*f*):

* * * * *

The term "person" includes a body corporate: "Person:"

The term "Secretary of State" means one of Her Majesty's principal Secretaries of State: "Secretary of State:"

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(*d*) That is, the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366.

(*e*) See the amending Acts: 42 & 43 Vict. c. 47, and 44 & 45 Vict. c. 67, *post*.

(*f*) Now 45 & 46 Vict. c. 50; see section 242 of that Act.

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"Harbour:" The term "harbour" means any harbour properly so called, whether natural or artificial, and any port, haven, estuary, tidal river or other river, canal or inland navigation navigated by sea-going ships, and any dock, pier, jetty, or other works in or at which ships do or can ship or unship goods or passengers:

"Harbour authority:" The term "harbour authority" includes any persons or person being or claiming to be proprietors or proprietor of or intrusted with the duty or invested with the power of improving, maintaining, or managing any harbour:

"Ship:" The term "ship" includes every description of vessel used in navigation, whether propelled by oars or otherwise:

"Summary Jurisdiction Acts:" The term "Summary Jurisdiction Acts" means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

* * * * *

"Court of Summary Jurisdiction:" The term "court of summary jurisdiction" means and includes any justice or justices of the peace, sheriff or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable.

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Definition of "petroleum" and application of Act. III. For the purposes of this Act the term "petroleum" includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-mentioned oils (*a*) . . . .

Bye-laws as to ship carrying petroleum. IV. Every harbour authority shall frame and submit for confirmation to the Board of Trade bye-laws for regulating the place or places at which ships carrying petroleum to which this Act applies are to be moored in the harbour over which such authority has jurisdiction, and are to land their cargo, and for regulating the time and mode of, and the precautions to be taken on, such landing. The harbour authority shall publish the bye-laws so framed with a notice of the intention of such authority to apply for the confirmation thereof. The Board of Trade may confirm such bye-laws with or without any omission, addition, or alteration, or may disallow the same.

Every such bye-law when confirmed shall be published by the harbour authority, and may be from time to time altered or repealed by a bye-law made in like manner. Bye-laws under this section shall be published in such manner as the Board of Trade may from time to time direct.

(*a*) The remainder of this section is repealed by 42 & 43 Vict. c. 47, s. 6, *post.*

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If at any time it appears to the Board of Trade that there is no bye-law for the time being in force under this section in any harbour the Board of Trade may, by notice, require the harbour authority of such harbour to frame and submit to them a bye-law for the purposes of this section, and if such harbour authority make default in framing a bye-law and obtaining the confirmation thereof within the time limited by such notice the Board of Trade may make a bye-law for the purposes of this section, and such bye-law shall have the same effect as if it had been framed by the harbour authority and confirmed by the Board of Trade.

Where any ship or cargo is moored, landed, or otherwise dealt with in contravention of any bye-law for the time being in force under this Act in any harbour, the owner and master of such ship, or the owner of such cargo, as the case may be, shall each incur a penalty not exceeding fifty pounds for each day during which such contravention continues, and it shall be lawful for the harbour master or any other person acting under the orders of the harbour authority of such harbour to cause such ship or cargo to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said bye-law, and all expenses incurred in such removal may be recovered in the same manner in which penalties are by this Act made recoverable.

Notice by owner or master of ship carrying petroleum.

V. The owner or master of every ship carrying a cargo any part of which consists of petroleum to which this Act applies, on entering any harbour within the United Kingdom, shall give notice of the nature of such cargo to the harbour authority having jurisdiction over such harbour.

If such notice is not given the owner and master of such ship shall each incur a penalty not exceeding the sum of five hundred pounds, unless it is shown to the satisfaction of the court before which the case is tried that neither the owner nor the master knew the nature of the goods to which the proceedings relate, nor could with reasonable diligence have obtained such knowledge.

Label on vessels containing petroleum.

VI. Where any petroleum to which this Act applies—

(*a.*) Is kept at any place except during the seven days next after it has been imported; or,

(*b.*) Is sent or conveyed by land or water between any two places in the United Kingdom; or,

(*c.*) Is sold or exposed for sale;

the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words "highly inflammable," and with the addition—

(*a.*) In the case of a vessel kept, of the name and address of the consignee or owner:

(*b.*) In the case of a vessel sent or conveyed, of the name and address of the sender:

(*c.*) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

All petroleum to which this Act applies which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section, shall, together with the vessel containing the same, be forfeited, and in addition

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thereto the person keeping, sending, selling, or exposing for sale the same shall for each offence be liable to a penalty not exceeding five pounds.

Regulations as to storage of petroleum.

VII. Save as hereinafter mentioned, after the passing of this Act petroleum to which this Act applies shall not be kept (*a*), except in pursuance of a license given by such local authority as is in this Act mentioned.

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept.

This section shall not apply to any petroleum kept either for private use or for sale, provided the following conditions are complied with:

(1.) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped:

(2.) That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

Definition of local authority.

VIII. The following bodies shall respectively be the local authority to grant licenses under this Act in the districts hereinafter mentioned; (that is to say),

(1.) In the city of London, except as hereafter in this section mentioned, the court of the Lord Mayor and aldermen of the said city:

(2.) In the metropolis (that is, in places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Management Act, 1855), except the city of London, and except as hereafter in this section mentioned, the Metropolitan Board of Works:

(3.) In any borough in England or Ireland, except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council:

(4.) In any place in England or Ireland, except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of Parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners:

(5.) In any place in England (except as hereafter in this section mentioned) within the jurisdiction of a local board constituted under the Local Government Act, 1858 (*b*), and not being any of the districts before mentioned or comprising any part of any such district, the local board:

(6.) In any borough in Scotland, except as hereafter in this section mentioned, the town council:

(*a*) This was held to apply to keeping in a cart for the purpose of being hawked: *Coleman* v. *Goldsmith*, 43 J. P. 718. But see now 44 & 45 Vict. c. 67, *post*.

(*b*) Now the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366.

(7.) In any place in Scotland, except as hereafter in this section mentioned, within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not being a borough or comprising any part of a borough, the police commissioners or trustees:

(8.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority:

(9.) In any place in which there is no local authority as before in this section defined, in England or Ireland, the justices in petty sessions assembled, and in Scotland any two or more justices of the peace for the county sitting as judges in the justice of the peace court.

Mode of granting licenses.

IX. (*c*) Licenses in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licenses, if any, granted by such authority are executed. Licenses may be granted for a limited time and may be subject to renewal or not in such manner as the local authority think necessary.

There may be annexed to any such license such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority, and generally as to the safe keeping of such petroleum as may seem expedient to the local authority.

Any licensee violating any of the conditions of his license shall be deemed to be an unlicensed person. There may be charged in respect of each license granted in pursuance of this Act such sum, not exceeding five shillings, as the local authority may think fit to charge.

In case of refusal of license the applicant may memorialize Secretary of State or Lord Lieutenant.

X. If on any application for a license under this Act the local authority refuse the license, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority, a certificate of the grounds on which they refused the license or annexed conditions to the grant thereof.

The applicant within ten days from the time of the delivery of the certificate may transmit the same to a Secretary of State if the application is for a license in England or Scotland, and to the Lord Lieutenant if the application is for a license in Ireland, together with a memorial, praying that notwithstanding such refusal the license may be granted, or that the conditions may not be imposed, or may be altered or modified in such manner and to such extent as may be set forth in such memorial.

It shall be lawful for the Secretary of State, or the Lord Lieutenant, if he think fit, on consideration of such memorial and certificate, and,

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(*c*) A license now gives a right to hawk petroleum. See 44 & 45 Vict. c. 67, s. 1, *post*. Any conditions inconsistent with that right are void, section 3.

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if he think it necessary or desirable, after due inquiry and a report by such person as he may appoint for that purpose, to grant the license prayed for, either absolutely or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority; and the license so granted, or altered and modified, as the case may be, when certified under the hand of a Secretary of State or the Lord Lieutenant, shall be to all intents as valid as if granted by the local authority.

Testing of petroleum by officer of local authority.

XI. Any officer authorized by the local authority may purchase any petroleum from any dealer in it, or may, on producing a copy of his appointment, purporting to be certified by the clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples of such petroleum on payment of the value of such samples.

When the officer has by either of the means aforesaid taken samples of petroleum, he may declare in writing to the dealer that he is about to test the same, or cause the same to be tested, in manner set forth in Schedule One to this Act (*a*), and it shall be lawful for him to test the same or cause the same to be tested, at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing, and if it appear to the officer or other person so testing that the petroleum from which such samples have been taken is petroleum to which this Act applies, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings that may be taken against a dealer in petroleum in pursuance of this Act; but it shall be lawful for a dealer proceeded against to give evidence in proof that such certificate is incorrect, and thereupon the court before which any such proceedings may be taken may, if such court think fit, appoint some person skilled in testing petroleum to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect (*b*).

Any expenses incurred in testing any petroleum of such dealer in pursuance of this section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale, petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands, and in case the local authority are the justices, out of the county rate.

Penalty for refusing information and obstructing officer.

XII. Any dealer who refuses to show to any officer authorized by the local authority every or any place or all or any of the vessels in which petroleum in his possession is kept or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who

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(*a*) This schedule was repealed by the Statute Law Revision Act, 1883. See now 42 & 43 Vict. c. 47, s. 2, *post*.

(*b*) It is a question of fact for the court to decide whether the statutory directions as to testing have been complied with. *Beck* v. *Stringer*, 35 J. P. 710.

wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a penalty not exceeding twenty pounds. Appndx.

Search for petroleum. See 23 & 24 Vict. c. 139, s. 25.

XIII. Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed or exposed for sale within the jurisdiction of such court in contravention of this Act, at any place, whether a building or not, or in any ship or vehicle, such court shall grant a warrant by virtue whereof it shall be lawful for any person named in such warrant to enter the place, ship, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum therein, and take samples of any petroleum found therein, and if any petroleum to which this Act applies be found therein, which is kept, sent, conveyed, or exposed for sale, in contravention of this Act, to seize and remove such petroleum, and the vessel containing the same, and to detain such petroleum and vessel until some court of summary jurisdiction has determined whether the same are or not forfeited, the proceedings for which forfeiture shall be commenced forthwith after the seizure (*c*).

Any person seizing any petroleum to which this Act applies in pursuance of this section shall not be liable to any suit for detaining the same, or for any loss or damage incurred in respect of such petroleum, otherwise than by any wilful act or neglect while the same is so detained.

If any petroleum to which this Act applies is seized in pursuance of this section in any ship or vehicle, the person seizing the same may use for the purposes of the removal thereof, during twenty-four hours after the seizure, the said ship or vehicle, with the tackle, beasts, and accoutrements belonging thereto, and if he do so shall pay to the owner thereof a reasonable recompense for the use thereof, and the amount of such recompense shall, in case of dispute, be settled by the court of summary jurisdiction before whom proceedings for the forfeiture are taken, and may be recovered in like manner as penalties under this Act may be recovered.

Any person who, by himself or by any one in his employ or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorized by this section, shall be liable to pay a penalty not exceeding twenty pounds, and to forfeit all petroleum to which this Act applies which is found in his possession or under his control.

Application of Act to other substances.

XIV. Her Majesty may from time to time make, revoke, and vary orders in council directing this Act or any part thereof to apply to any substance, and this Act, or the part thereof specified in the order shall, during the continuance of the order, apply to such substance, and shall be construed and have effect as if throughout it such substance had been

(*c*) A constable or officer is empowered by 44 & 45 Vict. c. 67, s. 4, to seize and detain any petroleum when he has reason to believe that a contravention of that Act is being committed.

Appndx. included in the definition of petroleum to which this Act applies, subject to the following qualifications:

(1.) The quantity of any substance to which this Act is directed by order in council to apply, which may be kept without a license, shall be such quantity only as is specified in that behalf in such order, or if no such quantity is specified no quantity may be kept without a license :

(2.) The label on the vessel containing such substance shall be such as may be specified in that behalf in the order.

Summary proceedings for offences, penalties, &c.

XV. In England and Ireland all offences and penalties under this Act, and all money and costs directed by this Act to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

In Scotland all offences and penalties under this Act, and all money and expenses by this Act directed to be recovered as penalties, shall, save as hereinafter provided, be prosecuted and recovered at the instance of the procurator fiscal or of any officer authorized in that behalf by the harbour authority or local authority under the provisions of the Summary Jurisdiction Acts before a court of summary jurisdiction, and all necessary powers and jurisdictions are hereby conferred on such court in Scotland.

Provided as follows:

1. A court of summary jurisdiction shall not impose a penalty exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

2. In Scotland any penalty exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of Parliament may be recovered and enforced.

3. The "Court of Summary Jurisdiction" when hearing and determining an information or complaint, shall be constituted in some one of the following manners; (that is to say),

(*a.*) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice; that is to say, the Lord Mayor, or any alderman of the city of London, a metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorized to be done by more than one justice of the peace:

(*b.*) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of one of the magistrates hereinafter mentioned sitting alone or with others at some court or other place appointed for the administration of justice ; that is to say, the sheriff of the county or his substitute, or the provost or other magistrate of a royal burgh, or some other officer or officers for the time being empowered by law to do alone or with others any act authorized to be done by more than one justice of the peace:

(*c.*) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of the police district of Dublin metro-

polis, sitting at a police court within the said district; and elsewhere, of a stipendiary magistrate, sitting alone, or with others, or of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions (*a*).

6. No conviction or order made in pursuance of this Act shall be quashed for want of form or be removed by *certiorari* or otherwise, either at the instance of the Crown or of any private party, into any superior court. . . .

8. In Scotland all penalties imposed under the provisions of this Act by a court of summary jurisdiction may be enforced in default of payment by imprisonment for a term not exceeding three calendar months; and all such penalties recovered and the proceeds of all forfeitures sold under this Act shall be paid to the clerk of the court of summary jurisdiction, and by him accounted for and paid to the persons and for the purposes under stated; (that is to say,)

(*a.*) To the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty, when the court is the sheriff's court:

(*b.*) To the collector of county rates in aid of the general county assessment when the court is the justice of the peace court:

(*c.*) To the treasurer of the burgh in aid of the funds of the burgh when the court is a burgh court.

9. In Ireland all penalties recovered under the provisions of this Act shall be applied according to the Fines, Ireland, Act, 1851, or any Act amending the same.

Reservation of previous powers with respect to inflammable substances.

XVI. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local or harbour authority by Act of Parliament, law, or custom, and every local authority and harbour authority may exercise such other powers in the same manner as if this Act had not passed; and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance.

XVII. (*b*).

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(*a*) Sub-sections 4, 5, and 7, and sub-section 6, except as above printed, were repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, which substitutes for the repealed parts the corresponding provisions of the Summary Jurisdiction Acts.

(*b*) This section repeals the previous Acts relating to petroleum, but is repealed, together with the schedule of repealed Acts, by the Statute Law Revision Act, 1883.

THE FACTORIES (STEAM WHISTLES) ACT, 1872.

(35 & 36 Vict. Cap. 61.)

An Act to regulate the use of Steam Whistles in certain Manufactories.
[6th August, 1872.]

Appndx.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Not to apply to Scotland.

I. This Act shall not apply to Scotland.

Use of steam whistles and trumpets.

II. No person shall use or employ in any manufactory, or any other place, any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues : Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same : Provided also, that it shall be lawful for the Local Government Board, on representation made to them by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

Definitions.

III. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866 (*a*).

Legal procedure.

IV. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, and any Acts amending the same. . . .

(*a*) Now the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366.

THE MUNICIPAL CORPORATIONS (BOROUGH FUNDS) ACT, 1872.

(35 & 36 Vict. Cap. 91) (*b*).

An Act to authorize the application of Funds of Municipal Corporations and other Governing Bodies in certain cases. [10th August, 1872.]

Appndx.

20 & 21 Vict. c. 50.

Whereas by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled An Act to amend the Acts concerning the Municipal Corporations, the trustees acting under any Act of Parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorized and empowered to transfer to the body corporate of such borough all their rights, estates, properties, and liabilities:

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, to provide for the regulation of Municipal Corporations in England and Wales (*c*), in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the borough, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough:

And whereas the Public Health Act, 1848, the Local Government Act, 1858 (*d*), and various local Acts of Parliament, have conferred powers of improving, cleansing, paving, lighting, and otherwise governing places or districts upon boards of health, commissioners, trustees, or other persons:

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs, charges, and expenses as may be incurred for the purposes and in the manner herein provided:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(*b*) The title of this Act is very misleading; as will be seen on reference to the definition of "governing body" in section 1, it applies to all sanitary authorities.

(*c*) Now the Municipal Corporations Act, 1882. See section 242 of that Act.

(*d*) Now the Public Health Act, 1875. See section 313 of that Act, *ante*, p. 366.

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Interpretation of terms.

I. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

Costs of promoting or opposing Parliamentary and other proceedings for benefit of inhabitants to be charged on borough and local funds, except in certain cases.

II. When in the judgment of a governing body (*a*) in any district it is expedient for such governing body to promote or oppose any local and personal bill or bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorize any governing body to promote any bill in Parliament for the establishment of any gas or waterworks to compete with any existing gas or water company established under any Act of Parliament (*b*): Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a bill by a governing body has been decided by a committee of either House of Parliament to be unreasonable or vexatious.

No payment to member of governing body to be so charged.

III. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid.

Costs of promoting or opposing

IV. No expense in relation to promoting or opposing any bill or bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the

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(*a*) This phrase, as defined in section 1, does not include the overseers of a parish, who have not, therefore, any power to charge on the poor rates the cost of opposing a bill in Parliament, even though the bill proposed to affect the poor rate. *Reg* v. *White*, 11 Q. B. D. 309; 52 L. J. M. C. 128; 49 L. T. (N.S.) 183; 31 W. R. 811; 48 J. P. 741.

(*b*) This proviso is singularly expressed, but it is understood as preventing the application of this Act to any competing bill. It may be stated that since the passing of this Act all private bills to which it applies have contained a detailed statement in the preamble of these requirements, and the committees to which they are referred have to ascertain that due proof is given of this part of the preamble. It is also to be noticed that the standing orders of the House of Lords require that where it is proposed in any bill that any local authority shall be authorized to borrow money for sanitary purposes without the sanction of the Local Goverment Board, estimates showing the proposed application for permanent work shall be recited herein and proved before the committee.

governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such board (*c*), and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a bill in Paliament no further expense shall be incurred or charged as aforesaid after the deposit of the bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the bill in Parliament: Provided further, that no expense in promoting or opposing any bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act (*d*).

Bills to require sanction of special meetings.

V. The approval of the Local Government Board or one of Her Majesty's principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

Proviso as to approval of Local Government Board, &c., to any such resolution.

VI. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and

Costs to be examined.

(*c*) The jurisdiction of the Local Government Board is considered to apply to all sanitary matters, and all highways and turnpike roads. In respect of all other matters not within the jurisdiction of that board, reference must be made to the Secretary of State.

(*d*) See now the Public Health Act, 1875, Schedule III., *ante*, p. 422, as to the mode of obtaining this consent and as to the expenses of the meeting.

It is to be observed that this section does not take away the right under the Municipal Corporations Act, or under the general law applicable to trustees, which a municipal corporation has to defray out of the borough funds or rates, the expenses of any attack made by a bill in Parliament, whether against their existence as a corporation or against their property, or only against their rights, powers, or privileges. *Attorney-General* v. *Brecon (Mayor of)*, 10 Ch. D. 204; 48 L. J. Ch. 153; 40 L. T. (N.S.) 52; 27 W. R. 332.

The court will not grant a *mandamus* to the mayor of a borough to hold a fresh meeting under this Act after a prior meeting has been held at which a poll was refused in order that at the fresh meeting a poll of the ratepayers might be taken, if the ratepayer applying for the *mandamus* is also one of the promoters of the bill. *Reg.* v. *Peterborough (Mayor of)*, 44 L. J. Q. B. 85; 23 W. R. 343.

The Local Government Board have declared that all the preliminary consents, including that of the owners and ratepayers, must be obtained before that board will give their approval, and they must be supplied with a statutory declaration by a competent person showing that all the statutory notices have been given and the requisite consents obtained.

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allowed by some person to be authorized by one of Her Majesty's principal Secretaries of State or by the Local Government Board, as the case may be.

Power to direct local inquiry.

VII. The Local Government Board, or one of Her Majesty's principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Saving clause.

VIII. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

Towns Improvement Clauses Act, 1847, s. 142, repealed.

IX. The one hundred and forty-second section of "The Towns Improvement Clauses Act, 1847," is hereby repealed so far as the same is inconsistent with the provisions of this Act (*a*).

Act not to extend to bills if object attainable by provisional order.

X. The provisions of this Act shall not extend to applications for any bill in Parliament for any object which would, for the time being, be attainable by provisional order (*b*).

Act not to apply to the metropolis.

XI. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act, 1855.

THE GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT.

(36 & 37 Vict. Cap. 89) (*c*).

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870. [5th August, 1873.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(*a*) Section 9 is now repealed by the Statute Law Revision Act, 1883.

(*b*) The Local Government Board are required to report to Parliament on every local bill relating to sanitary matters deposited in the offices prior to the meeting of Parliament, and hence they will not generally approve of any bill which proposes to introduce into any local district provisions which can be obtained by a provisional order, nor will they approve of the introduction into a local bill of provisions which the law of the land already supplies.

(*c*) See 33 & 34 Vict. c. 70, *ante*, p. 708.

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I. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873" (*d*). Short title.

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XII. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade (*e*) have made any provisional order, they may from time to time revoke, amend, extend, or vary such provisional order by a further provisional order. Power of Board of Trade to revoke, amend, extend, or vary provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order.

XIII. Where, in relation to any application for a provisional order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following: Authorizing and regulating inquiries by the Board of Trade for purposes of Gas and Water Works Facilities Act, 1870, and this Act.

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, hereinafter called the commissioner or commissioners:
2. Ten days notice at the least shall be given by the commissioner or commissioners of the time and place at which the inquiry is to be commenced:
3. The inquiry shall be commenced at the time and place so appointed, and the commissioner or commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit:
4. The commissioner or commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the commissioner or commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the commissioner or one of the commissioners for the purposes of the said inquiry shall, on summary conviction before two justices, or in Scotland before any sheriff or sheriff substitute, be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:

(*d*) Sections 2 to 11 and the schedule to this Act were repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

(*e*) The Local Government Board are substituted for the Board of Trade so far as regards provisional orders for the supply of gas by an urban authority.

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5. The commissioner or commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

Rules for carrying Acts into effect.

XIV. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters: (*a*)

The proceedings to be had before the board under the Gas and Water Works Facilities Act, 1870, or this Act; and

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

Act not to extend to metropolis.

XV. This Act shall not apply to any place within the metropolis as the same is defined in "The Metropolis Management Act, 1855."

THE ARTIZANS AND LABOURERS DWELLINGS IMPROVEMENT ACT, 1875.

(38 & 39 Vict. Cap. 36) (*b*).

An Act for facilitating the Improvement of the Dwellings of the Working Classes in Large Towns. [29th June, 1875.]

Whereas various portions of many cities and boroughs are so built, and the buildings thereon are so densely inhabited, as to be highly injurious to the moral and physical welfare of the inhabitants:

And whereas there are in such portions of cities and boroughs as aforesaid a great number of houses, courts, and alleys which, by reason of the want of light, air, ventilation, or of proper conveniences, or from other causes, are unfit for human habitation, and fevers and diseases are constantly generated there, causing death and loss of health, not only in the courts and alleys but also in other parts of such cities and boroughs:

And whereas it often happens that owing to the above circumstances, and to the fact that such houses, courts, and alleys are the property of several owners, it is not in the power of any one owner to make such alterations as are necessary for the public health:

And whereas it is necessary for the public health that many of such houses, courts, and alleys should be pulled down, and such portions of the said cities and boroughs should be reconstructed:

(*a*) See the general order of the Local Government Board, 26th October, 1877, *Glen's Local Government Orders*, p. 517.

(*b*) This Act applies to urban sanitary districts and authorities. See section 2. It is amended by 42 & 43 Vict. c. 63, and 45 & 46 Vict. c. 54, *post*.

And whereas in connection with the reconstruction of those portions of such cities and boroughs it is expedient that provision be made for dwellings for the working class who may be displaced in consequence thereof:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I. This Act may be cited for all purposes as "The Artizans and Labourers Dwellings Improvement Act, 1875." Short title.

II. This Act shall apply only to— Application of Act to certain districts, and description of local authority.

(1.) The City of London; and

(2.) The Metropolis, exclusive of the City of London; and

(3.) Urban sanitary districts in England (*c*) containing, according to the last published census, for the time being a population of twenty-five thousand and upwards;

(4.) Urban sanitary districts in Ireland containing, according to the last published census, a population of twenty-five thousand and upwards:

and the local authority shall be as follows; that is to say,—

(1.) As respects the City of London, the Commissioners of Sewers; and

(2.) As respects the Metropolis, the Metropolitan Board of Works; and

(3.) As respects each urban sanitary district, the urban sanitary authority of that district (*c*).

Part I.

Unhealthy Areas.

1. *Scheme by Local Authority.*

III. Where an official representation as hereinafter mentioned is made to the local authority that any houses, courts, or alleys within a certain area under the jurisdiction of the local authority are unfit for human habitation, or that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area within the jurisdiction of the local authority, and that such prevalence may reasonably be attributed to the closeness, narrowness, and bad arrangement or bad condition of the streets and houses or groups of houses within such area, or to the want of light, air, ventilation, or proper conveniences, or to any other sanitary defects, or to one or more of such causes, and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area, cannot be effectually remedied otherwise than by an improvement scheme for the Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

(*c*) See the Public Health Act, 1875, s. 6, *ante*, p. 17.

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re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Provided always, that no person being beneficially interested in any lands within such area shall vote as member of the local authority upon such resolution, or upon any question relating to the purchase or taking of lands in which he is so interested.

If any person votes in contravention of this proviso, he shall, on summary conviction, incur a penalty not exceeding twenty pounds; but the fact of his giving such vote shall not invalidate any resolution passed by the local authority.

Provided always, that any number of such areas may be included in one improvement scheme.

Official representation, by whom to be made.

IV. An official representation shall mean, in the metropolis, a representation made by the medical officer of health of any district board, or vestry, or by such medical officer as is hereafter in this Act mentioned, to the local authority, and elsewhere shall mean a representation made to the local authority by the medical officer of health of such authority (*a*). A medical officer acting in pursuance of this Act shall make such representation whenever he sees cause to make the same; and if two or more justices of the peace acting within the jurisdiction for which he is medical officer, or twelve or more persons liable to be rated to any rate out of the proceeds of which the expenses of the local authority under this Act are made payable, complain to him of the unhealthiness of any area within such jurisdiction, it shall be the duty of the officer forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the area is an unhealthy area or not an unhealthy area, for the purposes of this Act.

Requisites of improvement scheme of local authority.

V. The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates; it may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; it may also provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; also it shall distinguish the lands proposed to be taken compulsorily, and shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof (*b*); it shall also provide for proper sanitary arrangements. It may also provide for such scheme or any

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(*a*) As to the medical officer in an urban district, see the Public Health Act, 1875, s. 191, *ante*, p. 222.

(*b*) This provision is amended by 42 & 43 Vict. c. 63, s. 4, *post*, and by 45 & 46 Vict. c. 54, *post*.

part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person. Appndx.

2. *Confirmation of Scheme.*

VI. Upon the completion of an improvement scheme the local authority shall— Improvement scheme by provisional order to be confirmed by Parliament.

Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the jurisdiction of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area to which the scheme relates, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and, Publication of notices.

During the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands, such notice to be served— Service of notices.

(*a.*) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or,

(*b.*) By leaving the same at the usual or last known place of abode of such person as aforesaid; or,

(*c.*) By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such person.

One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

Upon compliance with the provisions contained in this section with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if such authority be the Commissioners of Sewers or the Metropolitan Board of Works, to a Secretary of State, and if such authority be an urban sanitary authority to the Local Government Board, praying that an order may be made confirming such scheme. The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessee or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this Act referred to as the confirming authority), may from time to time require: Petition to Secretary of State or Local Government Board.

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area to which

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the scheme relates, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme :

After receiving the report made upon such inquiry, the confirming authority may make a provisional order (*a*) declaring the limits of the area to which the scheme relates, and authorizing such scheme to be carried into execution. Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Act to be served, except tenants for a month or a less period than a month.

A provisional order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any provisional order made in pursuance of this Act, when confirmed by Parliament, with such modifications as may seem fit to Parliament, shall be deemed to be a public general Act of Parliament, and is in this Act referred to as the confirming Act.

The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

All costs, charges, and expenses incurred by the confirming authority in relation to any provisional order under this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

Costs to be awarded in certain cases.

VII. Where any bill for confirming a provisional order authorizing an improvement scheme is referred to a committee of either House of Parliament upon the petition of any person opposing such bill, the committee shall take into consideration the circumstances under which such opposition is made to the bill, and whether such opposition was or

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(*a*) As to provisional orders see the provisions of the Public Health Act, 1875, section 297, and the notes thereto.

was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the bill as the committee may think just.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The decision of the majority of the members of the committee for the time being present and voting on any question under this section shall be deemed to be the decision of the committee.

Inquiry on refusal of local authority to make an improvement scheme.

VIII. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, such local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry (*b*) to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

3. *Execution of Scheme by Local Authority.*

Duty of local authority to carry scheme, when confirmed, into execution.

IX. When the confirming Act authorizing any improvement scheme of a local authority under this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable. They may sell or let all or any part of the area to which such scheme relates to any purchasers or lessees for the purposes and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution ; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. The local authority may also engage with any body of trustees, society or societies, persons or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

(*b*) See section 16, *post*.

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Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

Provided also, that in any case in which the local authority erect any dwellings out of the funds to be provided under this Act, they shall, unless the confirming authority shall otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying out of the scheme in respect of such land by such person.

Completion of scheme on failure by local authority.

X. If within five years after the removal of any buildings on the land set aside by the provisional order as sites for working men's dwellings the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

Notice to occupiers by placards.

XI. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

Power of confirming authority to modify authorized scheme.

XII. The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme, and that due provision has been made or secured for the accommodation in suitable dwellings of as many persons of the working class as may be displaced in the area to which such scheme relates, either in manner provided by the scheme or in some other manner, or will be more advantageously made or secured under the proposed alteration, may permit the local authority to modify any part of an improvement scheme authorized by the confirming Act which it may appear inexpedient to carry into execution in accordance with such Act (*a*).

(*a*) See 45 & 46 Vict. c. 54, s. 3, *post*.

A statement of any modification permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament: Provided always, that if such modification or alteration shall require a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or shall affect injuriously other property in a manner different to that proposed in the former scheme, without the consent of the owner and occupier of any such property, it must be made by a provisional order to be confirmed by Act of Parliament in the manner provided in section six of this Act on the completion of an improvement scheme. Appndx.

Part II.

Provisions ancillary to Improvement Scheme.

As to Local Authority.

1. *Medical Officer.*

Medical officer of health in metropolis.

XIII. The Metropolitan Board of Works may, with the assent of a Secretary of State, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect this Act in the metropolis. Any officer so appointed by the Metropolitan Board of Works shall be deemed to be a medical officer of health of a local authority within the meaning of this Act, and shall perform the duties and be subject to the liabilities which such medical officer is by this Act required to perform and be subject to.

Provision in case of absence of medical officer of health.

XIV. In case of the illness or unavoidable absence of the medical officer of health, the district board, vestry, or local authority, as the case may be, may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, who shall for the period of six calendar months, or any less period to be named in the appointment, have and perform all the powers and duties of a medical officer of health under this Act.

Inquiry on default of medical officer in certain cases.

XV. Where twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within the jurisdiction of such officer, and the medical officer has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a medical officer to inspect such area and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is an unhealthy

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The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the officer appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where such officer is of opinion that the area is an unhealthy area.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

2. *Local Inquiry.*

Proceedings on local inquiry.

XVI. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme.

Notice of inquiry to be publicly given.

XVII. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

Power to administer oath.

XVIII. The officer conducting such inquiry shall have power to administer an oath; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient.

3. *Acquisition of Land (a).*

Acquisition of land.

XIX. (1.) The clauses of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the schedule hereto, apply to any lands taken in pursuance of this Act, but save as aforesaid the said Lands Clauses Consolidation Act, 1845, and the Lands Clauses

(a) As to the redemption of tithe on land acquired under this Act, see 41 & 42 Vict. c. 42, ss. 1, 2.

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Consolidation Acts Amendment Act, 1860 (*b*), as amended by the provisions contained in the schedule hereto, shall regulate and apply to the purchase and taking of lands in England, and shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof; and (2.) "The Lands Clauses Consolidation Act, 1845," as amended by "The Lands Clauses Consolidation Act, 1860," "The Railways Act (Ireland), 1851," "The Railways Act (Ireland), 1860," "The Railways Act (Ireland), 1864," and "The Railways Traverse Act," shall, subject to the provisions following, regulate and apply to the purchase and taking of lands in Ireland, and shall for this purpose be deemed to form part of this Act, in the same manner as if they were enacted in the body hereof,

Subject, as respects both England and Ireland, to the provisions following; that is to say,

(1.) This Act shall authorize the taking by agreement any lands which the local authority may require for the purpose of carrying into effect the scheme authorized by any confirming Act, but it shall authorize the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily:

(2.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this Act requires to be assessed, the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands which in the opinion of the arbitrator have been included in a scheme as falling under the description of property named in the third section of this Act (*c*):

(3.) In the construction of the said Lands Clauses Consolidation Acts, and the provisions in the said schedule, this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

Extinction of rights of way and other easements.

XX. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme authorized by a confirming Act, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part

(*b*) See these Acts, *ante*, pp. 505, 681. Section 121 of the Act of 1845 is incorporated by this section: *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78.

(*c*) See the provisions of 42 & 43 Vict. c. 63, s. 3, *post*, and 45 & 46 Vict. c. 54, s. 4, *post*. As to the time when the ownership of the property passes, see *Barnet* v. *Metropolitan Board of Works*, 46 L. T. (N.S.) 383; 46 J. P. 469.

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thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this Act, or as near thereto as circumstances admit (*a*).

4. *Expenses.*

Formation of improvement fund for purposes of this Act.

XXI. A separate account shall be kept by the local authority of their receipts and expenditure in respect of any transactions under this Act. Their receipts shall form a fund (in this Act referred to as "The Dwelling-house Improvement Fund"), and their expenditure shall be made out of such fund.

The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

In settling any accounts of the local authority in respect of any transactions under this Act, care shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this Act; and any balances of profit made by the local authority under this Act shall be applicable to any purposes to which the local rates are for the time being applicable.

The local rates shall, in the case of the commissioners of sewers, mean the sewer rate and the consolidated rate leviable by such commissioners, or either of such rates.

The Metropolitan Board of Works shall levy as part of the metropolitan consolidated rate within the area of the metropolis, without making any demand on the city of London, a sufficient amount for the purposes of this Act, and the part so levied shall, for the purposes of this Act, in the case of the Metropolitan Board of Works, be referred to and included under the expression "local rates."

The "local rates" shall in the case of an urban sanitary authority mean all or any rates or rate levied throughout the district of such authority, and out of which the local authority is authorized to pay any expenses incurred under the Sanitary Acts (*b*), as defined by the Public Health Act, 1872, and by the Public Health (Ireland) Act, 1874.

The local authority may carry to the account of the Dwelling-house Improvement Fund any moneys or the produce of any property, which moneys or produce are or is legally applicable to purposes similar to the purposes of this Act; and in case of doubt as to whether, in any particular

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(*a*) The provisions of this section apply to ancient lights in respect of premises adjoining the lands purchased, and the loss of such ancient lights is a matter of compensation by the local authority according to the Act: *Badham* v. *Marris*, 45 L. T. (N.S.) 579; *Swainston* v. *Metropolitan Board of Works*, 52 L. J. Ch. 235; 48 L. T. (N.S.) 634; 31 W. R. 498.

(*b*) *i.e.*, the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366.

case, the purposes are similar to the purposes of this Act, it shall be lawful for the confirming authority to decide such question, and such decision shall be conclusive.

Power of borrowing money for the purposes of the Act.

XXII. Any local authority under this Act may for the purposes of this Act borrow any moneys on the security of any lands, houses, or other property acquired by them under this Act, and may mortgage such lands, houses, or other property to any person advancing such moneys, and it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for the misapplication thereof.

Every local authority borrowing on the credit of such lands, houses, or other property as aforesaid may pay out of local rates the interest of any moneys so borrowed by them.

Any local authority under this Act borrowing any moneys on the security of any lands, houses, or other property as aforesaid may execute such instruments by way of security, with such power of sale and other conditions as they think expedient.

An urban sanitary authority shall have the same power of borrowing on the credit of the local rates such sums of money as they may require for the purposes of this Act as they have under section forty of the Public Health Act, 1872 (*c*), or under the Public Health (Ireland) Act, 1874, for sanitary purposes.

The commissioners of sewers may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the commissioners of sewers the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners shall be incorporated with this Act; and in the construction of that Act "the special Act" shall mean this Act; "the commissioners" shall mean the commissioners of sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the commissioners of sewers by this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

The Metropolitan Board of Works may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works (Loans) Act, 1869, for the purpose of raising such sums as they may require for the purposes of this Act, but there shall be repaid to the consolidated rate out of the local rate all moneys required for payment of the dividends on and the redemption of the consolidated stock created for the purposes of this Act.

The Public Works Loan Commissioners, or, in the case of Ireland, the Commissioners of Public Works, acting with the consent of the Treasury, may, on the recommendation on the confirming authority, lend to any local authority any money required by them for purposes of this Act, on the security, in the case of the Metropolitan Board of

(*c*) *i.e.*, of the Public Health Act, 1875; see section 313 of that Act, *ante*, p. 366. As to borrowing powers under that Act, see sections 233—244, *ante*, pp. 270–280.

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Works, of consolidated stock created under the Metropolitan Board of Works (Loans) Act, 1869, and in any other case on the security of the local rates. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority, and shall bear interest at the rate of three and a half per cent. per annum, or such higher rate as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

Any limit imposed on or in respect of local rates by any Act of Parliament other than this Act shall not apply to any rate required to be levied for the purpose of defraying any expenses under this Act.

Audit of accounts.

XXIII. The accounts of the commissioners of sewers and the accounts of the Metropolitan Board of Works under this Act shall respectively be audited in the same manner and with the same power in the officers auditing the same in which the accounts of those bodies, when acting in their capacities of commissioners of sewers and Metropolitan Board of Works, are for the time being required to be audited by law.

The accounts of an urban sanitary authority under this Act shall be audited in the same manner and with the same power in the officers auditing the same in which the accounts of that authority in its character of sanitary authority are for the time being required to be audited by law.

Part III.

General Provisions.

Provision where local authority has no seal.

XXIV. Any petition or document proceeding from a local authority may be authenticated by their seal where such authority have a seal, and in any other case by the signature of any two or more members of the local authority, or in such other manner as the confirming authority may require.

Notices.

Service of notice on the local authority.

XXV. Any notice required to be served upon the local authority may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Power of confirming authority as to advertisements and notices.

XXVI. The confirming authority may from time to time by order prescribe the forms of advertisements and notices under this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this Act.

Power of confirming authority to dispense with notices in certain cases.

XXVII. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by

this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

Authentication of notices served by the local authority.

XXVIII. Any notice served by the local authority for the purposes of this Act may be signed by the clerk of the local authority.

Penalties.

Penalty for obstructing officers in execution of Act.

XXIX. Where any person obstructs the officer of health or any officer of the local or confirming authority acting in the performance of anything which the local or confirming authority are by this Act required or authorized to do, every person so offending shall, on summary conviction, for every such offence forfeit a sum not exceeding twenty pounds.

Saving Clauses.

Relation of local Acts to general Acts.

XXX. Where in any place to which this Act applies, any local Act is in force providing for objects the same as or similar to the objects of this Act, the enactments of such local Act may be enforced at the discretion of the local authority either instead of or in concurrence with this Act; provided that the local authority of any place to which this Act applies shall not, by reason of any local Act within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under this Act.

Definitions.

Definitions of terms of Act.

XXXI. The expressions hereinafter mentioned shall respectively have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

"Secretary of State" means one of Her Majesty's principal Secretaries of State: "Secretary of State."

"Person" shall include a body of persons, corporate or unincorporate: "Person."

"Lands" shall include messuages, lands, tenements, and hereditaments of any tenure, and any right over land: "Lands."

"The city of London" shall include the liberties thereof: "The city of London."

"The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works: "The metropolis."

"A district board or vestry" within the metropolis means a district board or vestry as incorporated by the Metropolis Management Act, 1855: "A district board or vestry."

"Medical officer of health" shall, in the case of Ireland, mean consulting sanitary officer: "Medical officer of health."

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"Local Government Board." "Clerk of local authority." "Superior courts." "The Treasury." "This Act."

"Local Government Board" shall, in the case of Ireland, mean Local Government Board of Ireland:

"Clerk of local authority" shall, in the case of Ireland, mean executive sanitary officer and acting clerk:

"Superior courts" shall mean, in the case of Ireland, Her Majesty's superior courts in Ireland:

"The Treasury" shall mean the Lords Commissioners of the Treasury, or any two of them:

"This Act" includes any confirming Act as hereinbefore defined.

SCHEDULE.

Provisions with Respect to the Purchase and Taking of Lands in England otherwise than by Agreement, and otherwise Amending the Lands Clauses Act, 1845.

Deposit of Maps and Plans.

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily (which lands are hereinafter referred to as the scheduled lands), together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority.

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

Proceedings on Arbitration (a).

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(a) Articles 5 to 13 are repealed; see 45 & 46 Vict. c. 54, s. 5, *post.*

Payment of Purchase Money.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate, stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the costs of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that any person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in any of Her Majesty's superior courts of law at Westminster, or in any court to which the jurisdiction of such courts may be transferred, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorized to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act, for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the local authority.

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(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act, 1845," as amended by "The Court of Chancery Funds Act, 1872," "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act, 1845," as amended by "The Court of Chancery Funds Act, 1872," and the amount so paid into the said bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the local authority.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the costs and charges of the local authority, be enforced by any party or parties, by application to the High Court of Chancery, or any court to which the jurisdiction of the High Court of Chancery may be transferred, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

Entry on Lands on making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time, after the arbitrator has framed his provisional award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased

or taken by the local authority, and mentioned in such provisional award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority, at any time after he has framed such provisional award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such provisional award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such provisional award as the sum or sums to be paid by such local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under this Act, shall be had, and payments made, as if such entry and deposit had not been made; provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where under the provisions of this Act, such compensation is required to be paid into the said bank, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the Court of Chancery, or of any court to whom the powers of the Court of Chancery may be transferred, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon, for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as aforesaid by the local authority it shall be lawful for the Court of Chancery, or any other court to which the jurisdiction of the Court of Chancery may be transferred, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

Appeal.

(26.) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under this Act (or any party claiming under

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the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds five hundred pounds, and

Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds five hundred pounds, also

Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of five hundred pounds ;

The party dissatisfied may submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

(1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate ;

(2.) Where moneys have been paid into court, at the date of the payment into court :

(3.) Where the local authority appeals, at the date of the making of the final award.

(27.) Where a notice has been given under this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one : Provided also, that,—

(1.) Where the local authority appeals, that authority shall be deemed to be the plaintiff, and the party entitled to compensation to be the defendant ; and

(2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the Court of Queen's Bench, or any court to which the jurisdiction of the Court of Queen's Bench may be transferred ; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant,—

(1.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct ; and,

(2.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local autho-

rity shall pay to the other party the costs of the trial such costs to be taxed and ascertained in manner aforesaid.

(4.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

Costs of Arbitration.

(28.) The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of this Act into execution, shall be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly. Further, any such certificate may be made a rule of one of the superior courts of law on the application of any party named therein, and may be enforced accordingly.

(29.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from such local authority, with interest at the rate of five per cent. for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment

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of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the *London Gazette*.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 Vict. Cap. 63) (*a*).

An Act to repeal the Adulteration of Food Acts, and to make better provisions for the Sale of Food and Drugs in a pure state.

[11th August, 1875.]

Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. (*b*).

Interpretation of words.

II. The term "food" shall include every article used for food or drink by man, other than drugs or water (*c*):

The term "drug" shall include medicine for internal or external use:

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough (*d*):

(*a*) See the amending Act, 42 & 43 Vict. c. 30, *post*.

(*b*) This section repealed previous Acts, and is now itself repealed by the Statute Law Revision Act, 1883.

(*c*) Held by the Recorder of Cambridge, J. R. Bulwer, Esq., Q.C., that baking powder is not food. *Warren* v. *Phillips*, 44 J. P. 61.

(*d*) And every liberty having a separate court of quarter sessions other than a cinque port. 42 & 43 Vict. c. 30.

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland. **Appndx.**

Description of Offences.

III. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour. Prohibition of the mixing of injurious ingredients, and of selling the same.

IV. No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence. Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

V. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge. Exemption in case of proof of absence of knowledge.

VI. No person shall sell to the prejudice of the purchaser (*e*), any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser (*f*), under a penalty Prohibition of the sale of articles of food and

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(*e*) It is not now a defence that the article was purchased for analysis. See 42 & 43 Vict. c. 30, s. 2, *post*. As to sale of spirits, see section 6 of the same Act, *post*. It is no defence that the article was purchased with money belonging to the authority. *Hoyle* v. *Hitchman*, 4 Q. B. D. 233; 48 L. J. M. C. 97. When the seller of an article brings to the purchaser's knowledge the fact that the article sold to him is not of the nature, quality, or substance of the article which he demands, the sale is not to his prejudice within this section. *Sandys* v. *Small*, 3 Q. B. D. 449; 47 L. J. M. C. 115; 39 L. T. (N.S.) 118; 26 W. R. 814; and he may purchase the article by an agent. *Horder* v. *Scott*, 5 Q. B. D. 552; 49 L. J. M. C. 78; 44 J. P. 796; *Stace* v. *Smith*, 45 J. P. 141.

(*f*) Proof of *mens rea* does not appear to be necessary. See *Fitzpatrick* v. *Kelly*, L. R. 8 Q. B. 337; *Mullins* v. *Collins*, L. R. 9 Q. B. 292; *Roberts* v. *Egerton*, *ib.* 494.

Lard adulterated with fifteen per cent. of water is not the article demanded by a purchaser who asks for lard. *Rook* v. *Hopley*, *post*, p. 811. Where the purchaser asked for cream, and was supplied with cream at 1*d.* per gill, which

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of drugs not of the proper nature, substance, and quality.

not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,

(1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof (*a*).

(2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(3.) Where the food or drug is compounded as in this Act mentioned;

(4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation (*b*).

Provision for the sale of compounded articles of food and compounded drugs.

VII. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Protection from offences by giving of label.

VIII. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed (*c*).

Prohibition of the abstraction of any part of

IX. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of

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was found on analysis to have been diluted with 34 per cent. of skimmed milk, and it was proved that the seller had for sale a superior quality of cream diluted with less skimmed milk which he sold at a higher price, it was held that the seller had not committed an offence in selling the inferior cream at a lower price. *Morton* v. *Green*, 8 Sc. Sess. Cas., 4th series, 36.

(*a*) Mustard not sold as pure mustard and mixed with flour and turmeric was held not to be within the corresponding provisions of a former Act. *Pope* v. *Tearle*, L. R. 9 C. P. 499; but *quære*, if mustard simply had been asked for. See *Sandys* v. *Markham*, 41 J. P. 52. See also *Horder* v. *Grainger*, 44 J. P. 188; *Goldsmith* v. *Maddaford*, 46 J. P. 44.

(*b*) See per BLACKBURN, J., in *Roberts* v. *Egerton*, *ante*, p. 805. It was held that this sub-section protected a person who sold buttermilk mixed with water, as water was necessarily added in the process of manufacture. *Warwick* v. *Johnstone*, 8 Sc. Sess. Cas., 4th series, 55.

(*c*) Where a label was used stating that an article purchased as coffee was a mixture of coffee and chicory, on analysis the coffee was only 60 per cent., and the justices found that the chicory was used fraudulently to increase the bulk, the court held that they were right. *Liddiard* v. *Reece*, 44 J. P. 233. The magistrate must find whether the chicory is fraudulently intended to increase the bulk, and if he so finds he must convict. *Horder* v. *Meddings*, *ib.* 234.

it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds. Appndx.

an article of food before sale, and selling without notice.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

X. In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place. Appointment of analysts.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions; provided that one of Her Majesty's principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

XI. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act. Town council of a borough may engage the analyst of another borough or of the county.

XII. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst Power to purchaser of an article

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of food to have it analysed.

appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

Officer named to obtain a sample of food or drug to submit to analyst.

XIII. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis (*a*).

Provision for dealing with the sample when purchased.

XIV. The person purchasing (*b*) any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent (*c*) selling the article his intention to have the same analysed by the public analyst (*d*), and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when sample is not divided.

XV. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or

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(*a*) As to obtaining samples of milk, see 42 & 43 Vict. c. 30, s. 3, *post*.

(*b*) Or his agent: see *Horder* v. *Scott*, *ante*, p. 805. Where a sanitary inspector purchased by his agent, and then himself entered the shop and gave notice, &c., under this section, it was held that this was a sufficient compliance with the Act: *Stace* v. *Smith*, 45 J. P. 141. The provisions of this section apply to a purchase by a private person as well as to a purchase by a public officer: *Parsons* v. *Birmingham Dairy Company*, 9 Q. B. D. 172; 51 L. J. M. C. 111; 30 W. R. 748; 46 J. P. 727.

(*c*) A railway porter delivering milk on arrival at a railway station is not the vendor's agent: see *Rouch* v. *Hall*, *infra*.

(*d*) It is not enough to notify that the article is for analysis simply: *Barnes* v. *Chipp*, 3 Ex. D. 176; 47 L. J. M. C. 85; 26 W. R. 635. This section need not be complied with in case of a purchase of milk under 42 & 43 Vict. c. 30, s. 3, *post*: *Rouch* v. *Hall*, 6 Q. B. D. 17; 50 L. J. M. C. 6; 29 W. R. 304; 45 J. P. 220; and see *Chappell* v. *Emson*, 48 J. P. 200.

fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter. Appndx.

Provision for sending article to the analyst through the post office.

XVI. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing to sell any article to any officer liable to penalty.

XVII. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds (*e*).

Form of the certificate.

XVIII. The certificate of the analysis *shall* (*f*) be in the form set forth in the schedule hereto, or to the like effect.

Quarterly report of the analyst.

XIX. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

Proceedings against Offenders.

Proceedings against offenders.

XX. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

(*e*) As to the penalty for refusing to supply samples of milk, see 42 & 43 Vict. c. 30, s. 4, *post*. Section 5 of that Act extends this section to sales in the streets.

(*f*) The Middlesex Sessions held that this certificate was a condition precedent to the conviction, and that if it were not in the prescribed form the conviction must be quashed: *Peart* v. *Barstow*, 44 J. P. 699.

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Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three (*a*). In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst primâ facie evidence for the prosecution, but analyst to be recalled if required. Defendant and his wife may be examined.

XXI. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly (*b*).

Power to justices to have articles of food and drug analysed.

XXII. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Appeal to quarter sessions.

XXIII. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace (*c*).

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town where the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit,

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(*a*) As to the time within which proceedings must be taken and the delivery of particulars of the offence charged, see 42 & 43 Vict. c. 30, s. 10, *post*.

(*b*) Therefore, if no evidence is tendered by the defendant the magistrate must act on the certificate, and convict: *Harrison* v. *Richards*, 45 J. P. 552.

(*c*) This section is here printed as it is left unrepealed by the Summary Jurisdiction Act, 1884, which substitutes the corresponding provisions of the Summary Jurisdiction Acts.

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the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner and with such notices as are required by the said Petty Sessions Acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

In any prosecution defendant to prove that he is protected by exception or provision.

XXIV. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty. No costs except on issues proved against him.

XXV. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect (*b*), that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Application of penalties.

XXVI. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

Punishment for forging certificate or warranty;

XXVII. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;

for wilful misapplication of warranty;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

(*b*) An invoice describing an article as lard when the lard was adulterated with water was held not to be a warranty: *Rook* v. *Hopley*, 3 Ex. D. 209; 38 L. T. (N.S.) 649; 26 W. R. 663; 42 J. P. 551. A written contract to supply new and pure milk is not a warranty within this section: *Harris* v. *May*, 12 Q. B. D. 97; 53 L. J. M. C. 39; 48 J. P. 261.

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for false warranty;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceedings by indictment and contracts not to be affected.

XXVIII. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

Expenses of executing the Act.

Expenses of executing Act.

XXIX. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the commissioners of sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate (*a*);

And as regards Ireland, in counties by the grand jury cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

(*a*) Quarter sessions boroughs are not to contribute to payment of county analyst: 42 & 43 Vict. c. 30, s. 8. As to boroughs with separate police, see section 9 of the same Act.

Special Provision as to Tea.

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XXX. From and after the first day of January, one thousand eight hundred and seventy-six, all tea imported as merchandize into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the commissioners of customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct (*b*). Tea to be examined by the Customs on importation.

XXXI. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means. Interpretation of Act.

XXXII. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county. Provision for the liberty of a cinque port.

XXXIII. (*c*).

* * * * *

XXXV. This Act shall commence on the first day of October, one thousand eight hundred and seventy-five. Commencement of the Act.

XXXVI. This Act may be cited as "The Sale of Food and Drugs Act, 1875." Title of the Act.

(*b*) A person who represents tea to be good when it is in fact unfit to drink may be convicted of obtaining money by false pretences: see *R.* v. *Foster*, 2 Q. B. D. 301; 46 L. J. M. C. 128; 41 J. P. 295. As to the sale of green tea in the same state as imported, see *Roberts* v. *Egerton, ante*, p. 805.

(*c*) This section relates to Scotland, and section 34 to Ireland only.

SCHEDULE.

Form of Certificate.

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To*

I, the undersigned, public analyst for the , do hereby certify that I received on the day of , 18 , from† , a sample of for analysis (which then weighed‡), and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations.§

As witness my hand this day of

A. B.,

at .

---

* Here insert the name of the person submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to composition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

THE LOCAL AUTHORITIES LOANS ACT, 1875.

(38 & 39 Vict. Cap. 83.)

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August, 1875.]

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Whereas it is expedient to amend the law relating to securities for loans contracted by local authorities:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(1.) *Preliminary.*

Short title.

I. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Limits of Act.

II. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

III. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Definition of borrowing under Act.

IV. A local authority (*a*) shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

(2.) *Debentures.*

Regulations as to debentures.

V. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

(*a*) See the definition of local authority in section 34, *post*. The term includes sanitary authorities.

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A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

(3.) *Debenture Stock* (*a*).

Regulations as to debenture stock.

VI. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorized to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

(*a*) As to composition for stamp duty on transfer of debenture and other stocks of municipal corporations, see the Inland Revenue Act, 1880, 43 & 44 Vict. c. 20, s. 53; and as to the stamp duty on stock certificates to bearer, see the Customs and Inland Revenue Act, 1881, 44 Vict. c. 12, s. 46.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(4.) *Annuity Certificates.*

Regulations as to annuity certificates.

VII. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or asssigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5.) *Priority of Loans.*

Priority of loans.

VIII. All sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of the same loan by a

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local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorized to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorized to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorized to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

Notice of trust not receivable.

IX. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act.

Owners of securities not responsible for acts of local authority.

X. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7.) *Remedy for Non-payment.*

Remedy by *mandamus* for non-payment of money.

XI. The local authority shall pay or raise all sums for the time being due or authorized to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a *mandamus* will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a *mandamus* may be claimed.

Remedy by appointment of receiver for non-payment of money.

XII. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in

or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorized to be raised is charged on the local rate, the receiver may raise the money he is authorized to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorized to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorized to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) *Discharge of Loan.*

Loan borrowed to be discharged within prescribed period.

XIII. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or,

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Discharge of loan by appropriation of annual sum

XIV. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the

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The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in presence of the local authority, and any owners of debenture or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of loan by sinking fund.

XV. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; that is to say,

(1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorized to make investments,) will at the expiration of some period, not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,

(2.) The first of such payments shall be made within one year from the date of the loan; and,

(3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorized to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and,

(4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:

(5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at

the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned:

(6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient:

(7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

(8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

Annual return as to sinking fund.

XVI. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by *mandamus*.

Supplemental Provisions.

(1.) *As to Coupons.*

Temporary issue of coupons.

XVII. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

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Endorsement and crossing of coupons.

XVIII. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Where a coupon bears across its face in addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

Coupons issued in respect of a security are exempt from stamp duty as if attached thereto.

XIX. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2.) *As to Stock Certificates.*

Conversion into nominal debenture stock of stock in certificate to bearer.

XX. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

Trustee not to apply for stock certificate to bearer.

XXI. A trustee of debenture stock shall not apply for or hold a stock certificate to bearer unless authorized to do so by the terms of his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust. But this provision shall not impose on the local authority an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject the local authority to any liability in the event of their issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued.

(3.) *As to Execution and Supply of Securities.*

Execution and supply of securities.

XXII. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures,

stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct. Appndx.

(4.) *As to Register of Nominal Securities.*

Register of nominal securities.

XXIII. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

(2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorized to be inserted therein.

Inspection of register.

XXIV. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of register.

XXV. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(5.) *As to Loans under Official Sanction.*

Appndx.

Permissive issue of securities under official sanction.

XXVI. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorize the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; that is to say,

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

Power for trustees to invest in loans under Act.

XXVII. Any trustees or other persons for the time being authorized or directed to invest any moneys in the debentures or debenture stock of any railway or other company shall, unless the contrary is provided by the instrument authorizing or directing such investment, have the same power of investing such moneys in any nominal debentures or nominal debenture stock issued under this Act as they have of investing such moneys in debentures or debenture stock of any railway or other company as aforesaid.

XXVIII. When the Public Works Loan Commissioners are authorized to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan. Power for Public Works Loan Commissioners to take securities under Act.

(7.) *As to General Rules.*

XXIX. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act. Application of rules in schedule.

XXX. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters: Power to make general rules.

(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) *As to Borrowing.*

XXXI. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorized to borrow (*a*). Borrowing and re-borrowing by local authorities.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(*a*) It is to be observed that this Act regulates the mode of borrowing and the securities to be given, but it does not itself authorize borrowing in any particular case or cases.

(9.) *As to Forgery and Loss of Securities.*

Appndx.

Forgery of securities.

XXXII. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled, "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of securities.

XXXIII. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid or destroyed.

(10.) *Definitions.*

Definitions.

XXXIV. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorizing a local authority to borrow money:

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority (*a*):

"Municipal borough" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same (*b*):

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certifi-

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(*a*) See note (*a*), *ante*, p. 815.

(*b*) Now the Municipal Corporation Act, 1882, 45 & 46 Vict. c. 50. See section 242 of that Act.

cate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly : Appndx.

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise :

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act :

"Person" includes a body of persons corporate or unincorporate :

"Executors and administrators" includes successors.

(11.) *Repeal and consequential Enactment.*

XXXV. (*c*).

XXXVI. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name. Incorporation of county authority for purposes of Act.

SCHEDULE.

General Rules.

Transfer of Nominal Securities.

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

(*c*) Repealed by the Statute Law Revision Act, 1883.

Transmission of Nominal Securities.

Appndx.

(4.) The executors or administrators of a deceased owner of a nominal security, shall be the only persons recognized by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8.) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

THE PUBLIC WORKS LOANS ACT, 1875.

(38 & 39 Vict. Cap. 89) (*a*).

An Act to consolidate with Amendments the Acts relating to Loans for Public Works. [13th August, 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1875."

(*a*) See the Public Health Act, 1875, sections 233—244, *ante*, pp. 270—280. See also the amending Acts, 39 & 40 Vict. c. 31; 41 Vict. c. 18; 42 & 43 Vict. c. 77; 44 & 45 Vict. c. 38; 46 & 47 Vict. c. 42; 45 & 46 Vict. c. 62, *post*.

II. This Act shall, save as otherwise provided in this Act, come into operation on the first day of April one thousand eight hundred and seventy-six, which date is hereinafter referred to as the commencement of this Act. Appndx. — Commencement of Act.

III. This Act shall extend to the Isle of Man. Extent of Act.

Public Works Loan Commissioners.

IV. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorizing or referring to such loans, there shall be a body of commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners. Constitution, &c., of Public Works Loan Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act.

The Public Works Loan Commissioners shall hold office during such period as may be authorized by any Act appointing them, and if no period is so authorized, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the commissioners occurs by any commissioner dying or declining to act, or declining further to act, the remaining commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such commissioner.

V. With respect to the Loan Commissioners the following provisions shall have effect: Powers, &c., of commissioners.

(1.) The Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity brought or commenced by or against the said commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said commissioners; but the secretary to the said commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be; and

(2.) The commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration; and

Appndx.

(3.) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit:

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners:

Such report shall be transmitted to the Treasury within two months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament; and

(4.) Any minute made of proceedings at meetings of the Commissioners, if signed by any person purporting to be the chairman, either of the meeting of the commissioners at which such proceedings took place, or of the next ensuing meeting of the commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act; and

(5.) An act or proceeding of the commissioners shall not be questioned on account of any vacancy or vacancies in their body.

Officers and their salaries and expenses.

VI. The Loan Commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed.

The Loan Commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the Loan Commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

Every such salary or remuneration, and all expenses incurred by the Loan Commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

Securities given to and property vested in secretary to vest in his successor.

VII. Where under this or any other Act or any conveyance, obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action

whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning, or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act or any money due under a security for any such loan, and it shall not be necessary to make the Crown, or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

Execution of conveyances, leases, &c., by secretary on behalf of commissioners.

VIII. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorized by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorized by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary, shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exerciseable by the secretary of the commissioners in pursuance of this Act, shall be dealt with and exercised by him under the direction of the commissioners and not otherwise.

Objects, Terms, and Duration of Loan.

Loans for public works.

IX. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the first schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose (*a*).

(*a*) The schedule includes all, or nearly all, the purposes for which a sanitary authority may borrow money. As to the amount of loan which may be made in one year, see 42 & 43 Vict. c. 77, s. 3, *post*.

Appndx.

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament (*a*).

Interest on loan.

X. Every loan granted under this Act shall bear interest at a rate not less than the rate authorized by a special Act relating to such loan, or if no rate be so authorized, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the commissioners under "The Harbours and Passing Tolls, &c., Act, 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three and a half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the exchequer.

Term of years for repayment of loan.

XI. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorized by a special Act relating to such loan, or if no period be so authorized not exceeding twenty years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorized by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may, either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

Security for loans.

XII. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorized by the special Act relating

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(*a*) The commissioners may, on the application of a local authority and with the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by the Public Health Act, 1875. See section 243 of that Act, *ante*, p. 280.

to the loan, or if none is so authorized, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security. Appndx.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

Funds for Loans.

XIII. (*b*).

XIV. When any money has been granted by Parliament for the purpose of loans by the Loan Commissioners, the Treasury may from time to time, as they think fit, issue out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, the required sums, not exceeding in the whole the amount so granted. Issue of money for purpose of loans.

The said sums shall be issued in such manner as the Treasury may from time to time direct during the period authorized by the Act granting the same, or if no period is authorized, during the financial year for which such Act was passed, and not subsequently.

XV. If the Act granting money for the purpose of loans by the Loan Commissioners authorizes the Treasury to borrow such money, or any part thereof, the Treasury may raise any sums (not exceeding the amount authorized by the said Act to be borrowed, and not exceeding in any one financial year the excess of the issues out of the Consolidated Fund under this Act during that year over the repayments to the Consolidated Fund during that year in respect of the principal of loans granted by the Loan Commissioners either before or after the commencement of this Act), in such one or more of the following methods as may be directed by the Act authorizing the money to be borrowed, and subject to any such direction as may be deemed most convenient for the public service, namely, by the creation of three pounds per centum per annum permanent annuities, or of annuities for any term not exceeding thirty years, or by the issue of exchequer bonds or exchequer bills, or by otherwise borrowing the same (for a period not exceeding six months) on the credit of the charge created by this Act on the Consolidated Fund, or by all of such means; and the sums so raised shall be placed to the credit of the account of Her Majesty's Exchequer, and form part of the Consolidated Fund. Borrowing for the purpose of raising money.

The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of exchequer bonds) and all interest from time to time due thereon, or on exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury.

The principal of any exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

(*b*) This section is repealed by 45 & 46 Vict. c. 62, s. 9, *post*.

Appndx.

The annuities, whether terminable or perpetual, shall be created by warrant of the Treasury to the Bank of England, directing them to inscribe in their books the amount of such annuities in the names directed by the warrant.

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

Issue of money to the National Debt Commissioners.

XVI. All money issued by the Treasury for the purposes of loans under this Act shall be issued to the National Debt Commissioners, and placed to such account as may be from time to time directed by the Treasury, and shall be held by the National Debt Commissioners in trust on the part of the public, but subject to the disposal of the Loan Commissioners for the purpose of loans by them under this Act.

Repayments to commissioners to go to Consolidated Fund.

XVII. All sums paid or applicable in or towards the discharge of the principal or interest of any loan granted by the Loan Commissioners, either before or after the passing of this Act, or of any other sum due in respect of such loan, shall be paid into the receipt of Her Majesty's Exchequer, in such manner as the Treasury from time to time direct, and shall be carried to the Consolidated Fund; but where any security for any such loan is enforced, by taking possession, sale, levy of a rate, or otherwise, the net receipts only shall be paid into the receipt of Her Majesty's Exchequer in pursuance of this section.

Recovery of Loans.

Charge on property and priority of loan by the commissioners.

XVIII. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the commissioners and secured by a mortgage of the property executed to a person who is entitled as a *bonâ fide* creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act (*a*), and no rule of law or custom shall

(*a*) The special Act includes any Act relating to any person having power to borrow from the commissioners. 39 & 40 Vict. c. 31, s. 7.

affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act. **Appndx.**

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

XIX. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

XX. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the commissioners on their behalf. Every such security is in this Act referred to as a security given to the commissioners.

Taking possession by commissioners of property on default of payment.

XXI. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,

(1.) Take possession of the mortgaged property, or any part thereof; and

(2.) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and

(3.) Sell or mortgage the mortgaged porperty, or any part thereof.

Powers of commissioners when in possession.

XXII. The Loan Commissioners, when authorized to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

(1.) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exerciseable by the mortgagor or any person claiming through

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or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the commissioners; and

(2.) The commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in their secretary by this Act; and

(3.) The commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the commissioners may think expedient; and

(4.) The commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest (*a*) from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage; and

(5.) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorize the purchaser with the like consent to destroy the same, and sell or authorize the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the commissioners, nor their secretary, nor the purchaser so authorized, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section; and

(6.) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession became vested in the secretary of the commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would have been vested if possession had not been taken, but the commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them:

(*a*) Not less than 5 per cent., 44 & 45 Vict. c. 38, s. 7, *post*.

(7.) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act. Appndx.

Powers in relation to rate where default made.

XXIII. Where a loan made by the commissioners is secured by the mortgage of a rate (whether with or without any other security), and the commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the commissioners shall be paid by them to the mortgagor.

The commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revest in the mortgagor, subject to the said reservations and conditions.

Liability of commissioners after taking possession or in default of payment.

XXIV. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

Sale and mortgage by commissioners of mortgaged premises.

XXV. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the

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purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit, or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

XXVI. Every sale or mortgage made by the commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorized, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the mis-application or non-application thereof.

Terms of lease, sale, or mortgage.

XXVII. Any lease, mortgage, conveyance, or other disposition made by the secretary of the commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the Loan Commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled *bonâ fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the commissioners.

Application of money arising on taking possession, sale, mortgage, &c., by commissioners.

XXVIII. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the Loan Commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the commissioners think fit, shall be paid by the secretary of the commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

Payment loan before it is due, an transfer of security for all or part of loan.

XXIX. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the commissioners by the conveyance.

The commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Discharge of security and revesting of property on repayment of loan.

XXX. Upon all money due under a mortgage under this Act being fully paid the commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act shall, (unless the commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof,) revest in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the commissioners.

Bankruptcy of debtor.

XXXI. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the commissioners think fit to accept some other surety.

Form of mortgage.

XXXII. Every security given under this Act may be in such form as may be prescribed, and the fact of the secretary of the Loan Commis-

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sioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act.

Recovery of debt on personal security.

XXXIII. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay.

Every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case (*a*).

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

XXXIV. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan.

Supplemental Provisions as to Loans and Securities.

Security for completion of works partly

XXXV. Where the commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or otherwise, take such security for the applica-

(*a*) The commissioners may redeem the interest on any loan made before this Act to any rate not less than 4 per cent., but this provision is not to take away or abridge the power of the commissioners to reduce the interest on any loan under the Public Health Act, 1875, s. 243 (*ante*, p. 279), 39 & 40 Vict. c. 31, s. 6, *post*.

tion of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

finished or not commenced.

XXXVI. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

Examination as to proper application of moneys lent.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor (*b*).

XXXVII. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorize.

Suspension of payment of principal and interest.

XXXVIII. The Loan Commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Change of security.

XXXIX. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Concurrence by commissioners in leases, sales, &c., of mortgaged property.

Special Provisions as to Borrowers.

XL. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police

Power to various authorities to mortgage and levy rates.

(*b*) This section is amended by 41 Vict. c. 18, s. 4, *post*, and 44 & 45 Vict. c. 38, ss. 8, 9, *post*.

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station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act.

The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act (*a*).

The said justices *and council respectively* (*a*) shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

Miscellaneous.

Regulations by commissioners.

LXI. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the Commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and applications therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such commissioners, and with respect to the relations between such commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the *London Gazette*, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the *London Gazette* be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

XLII. (*b*).

Accounts.

XLIII. The Loan Commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account.

(*a*) This paragraph and the words "and council respectively," are repealed as to boroughs within the Municipal Corporations Act, 1882. See Schedule I. Part II. of that Act.

(*b*) Repealed by the Statute Law Revision Act 1883.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the Loan Commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the Loan Commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor-General in such manner as the Treasury may from time to time direct. **Appndx.**

Perjury.

XLIV. Any person who, when examined by the Loan Commissioners in pursuance of this Act, or any regulation made under this Act, wilfully gives false evidence, or who, for the purpose of obtaining a loan under this Act, wilfully gives information to such Commissioners which is false in any material particular, shall be guilty of perjury.

Authority, and laying before Parliament Treasury warrants.

XLV. The warrant of the Treasury issued under the authority of this Act shall be sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not within one month after the then next meeting of Parliament.

Receipt for money payable on account of loan, &c.

XLVI. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be served by post.

XLVII. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Notices to and by Commissioners.

XLVIII. Notices, and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the commissioners.

Notices and documents required for the purposes of this Act, or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

Effect of schedules.

XLIX. The schedules to this Act shall be construed and have effect as part of this Act.

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Application of Act to loans under special Acts.

L. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act (*a*) and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

Definitions.

LI. In this Act, if not inconsistent with the context—

The expression "person" includes a body of persons, whether corporate or unincorporate:

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "financial year" means the year ending the thirty-first day of March:

The expression "prescribed" means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression "special Act" means any Act passed before the passing of this Act which authorizes the Loan Commissioners to lend money for the purposes of any work mentioned in the first schedule to this Act and any Act passed after the passing of this Act, which authorizes the Loan Commissioners to lend money for any purpose:

The expression "security" includes a mortgage:

The expression "mortgage" includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security:

The expression "conveyance" includes any grant, assignment, transfer, or other disposition or assurance; and the expression "convey" shall be construed accordingly:

The expression "rate" means a rate, cess, or assessment, the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levy of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors, heirs, executors, administrators

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(*a*) As to the meaning of this term see section 18 note (*a*), *ante*, p. 834.

and assigns of, or other persons claiming through or under such mortgagor, or borrower. Appndx.

LII. (*b*).

LIII. The persons who at the commencement of this Act are officers of the commissioners under the Acts hereby repealed shall be the first officers of the Loan Commissioners under this Act. Existing officers of commissioners.

The Treasury may, on the petition of any such officer, inquire whether any, and if any, what compensation ought to be made to him by reason of his salary or remuneration being restricted in pursuance of the provisions of this Act, regard being had to the conditions under which he was appointed and employed, the nature of his office or employment, and the duration of his service, and if they think that his claim to compensation is established, may award to him, out of moneys to be provided by Parliament, such compensation, by way of increase of salary, allowance, or otherwise, as under the circumstances they think just and reasonable: Provided always, that if any officer has received remuneration in excess of what is considered by the Treasury sufficient remuneration for his office or employment, such excess shall not be considered to give any claim for compensation or increase of salary.

LIV. (*b*).

LV. A reference in any Act to any enactment hereby repealed, or to the commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act. Reference in Acts to repealed Acts.

LVI. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act. Saving for loans and transactions under repealed Acts.

The Loan Commissioners shall have the same power of making further advances on any mortgage made before the commencement of this Act and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made, and all securities and documents

(*b*) Repealed by the Statute Law Revision Act, 1883.

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Repeal of Acts.

LVII. The Acts specified in the third schedule to this Act so far as they are unrepealed are hereby repealed from and after the commencement of this Act, and so much of any other enactment as authorizes any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the first schedule of this Act, or as is otherwise inconsistent with this Act, is hereby repealed from and after the commencement of this Act.

Provided that—

(1.) The repeal of an enactment by this Act shall not affect—

(*a.*) The charge on the Consolidated Fund or moneys provided by Parliament of the principal and interest of exchequer bonds issued under any enactment hereby repealed ; nor any securities made or issued or anything duly done or suffered under any enactment hereby repealed ; nor

(*b.*) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement ; nor

(*c.*) Any right, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed ; nor

(*d.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; nor

(*e.*) Any powers, investigation, legal proceeding, or remedy in respect of any such security, thing, rate, power, right, obligation, liability, penalty, forfeiture, or punishment as aforesaid ; and any such powers, investigation, legal proceeding, and remedy may be exercised and carried on and had as if this Act had not passed (*a*).

SCHEDULES.

First Schedule.

Works for the purpose of which the Commissioners may lend Money.

Baths and wash-houses provided by local authorities.

Burial grounds provided by burial boards, or (in Scotland) by burial boards or parochial boards.

(*a*) The rest of the section was repealed by the Statute Law Revision Act, 1883.

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Conservation or improvement of rivers or main drainage.
Docks.
Harbours and piers, and any work for which the Public Works Loan Commissioners are authorized to lend by section three of the Harbours and Passing Tolls, &c., Act, 1861.
Improvement of towns.
Labourers dwellings. 24 & 25 Vict. c. 47.
Lighthouses, floating and other lights for the guidance of ships, buoys and beacons.
Lunatic asylums of any county or borough in Great Britain, or of any district or parochial board in Scotland.
Police stations and justices rooms of any county or borough in Great Britain and the offices connected therewith, also sheriff court buildings in Scotland.
Prisons.
Public libraries and museums.
Any schoolhouse or work for which a school board is authorized to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same, or under the Education (Scotland) Act, 1872. 33 & 34 Vict. c. 70.
Waterworks established or carried on by a sanitary or other local authority. 36 & 37 Vict. c. 86.
Workhouses or poorhouses, and any work for which guardians of the poor, or (in Scotland) any parochial board, are authorized to borrow under the general Acts relating to the relief of the poor. 35 & 36 Vict. c. 62.
Any work for which a sanitary authority are authorized to borrow under the Public Health Act, 1875.
Any work for which police commissioners are authorized to borrow under the General Police and Improvement (Scotland) Act, 1862, and any Act amending the same. 25 & 26 Vict. c. 101.
Any work for which a local authority are authorized to borrow under the Public Health (Scotland) Act, 1867, or any Act amending the same. 30 & 31 Vict. c. 101.
Any work for which the commissioners are authorized to lend by any Act passed after the passing or this Act.

Second Schedule.

Form of Declaration.

I, *A. B.*, do hereby declare that according to the best of my judgment I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner according to law.

Third Schedule.

Acts Repealed.

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Note.—Portions of Acts which have already been specifically repealed are in some instances included in the repeal in this schedule, in order to preclude henceforth the necessity of loooking back to previous Acts.

Session and Chapter.	Title or Short Title.
57 Geo. 3, c. 34 -	An Act to authorize the issue of exchequer bills and the advance of money out of the Consolidated Fund, to a limited amount, for the carrying on of public works and fisheries in the United Kingdom and employment of the poor in Great Britain in manner therein mentioned.
57 Geo. 3, c. 124 -	An Act to amend an Act made in the present session of Parliament authorizing the issue of exchequer bills and the advance of money for carrying on public works and fisheries and employment of the poor.
1 Geo. 4, c. 60 -	*An Act the title of which begins with the words,*—An Act to authorize,—*and ends with the words,*—executing the said Acts in Great Britain.
3 Geo. 4, c. 86 -	*An Act the title of which begins with the words,*—An Act to amend two Acts,—*and ends with the words,*—purposes of the said Acts.
5 Geo. 4, c. 36 -	An Act to amend and render more effectual the several Acts for the issuing of exchequer bills for public works.
5 Geo. 4, c. 77 -	An Act to amend the Acts for the issue of exchequer bills for public works.
6 Geo. 4, c. 35 -	An Act to render more effectual the several Acts for authorizing advances for carrying on public works, so far as relates to Ireland.
7 & 8 Geo. 4, c. 47 -	An Act for the further amendment and extension of the powers of the several Acts authorizing advances for carrying on public works.
1 & 2 Will. 4, c. 24	An Act to amend several Acts passed for authorizing the issue of exchequer bills and the advances of money for carrying on public works and fisheries and employment of the poor, and to authorize a further issue of exchequer bills for the purposes of the said Acts.

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Session and Chapter.	Title or Short Title.
3 & 4 Will. 4, c. 32	An Act to amend the several Acts authorizing advances for carrying on public works.
4 & 5 Will. 4, c. 72	An Act to amend several Acts for authorizing the issue of exchequer bills for carrying on public works and fisheries and employment of the poor, and to authorize a further issue of exchequer bills for the purposes of the said Acts.
7 Will. 4 & 1 Vict. c. 51	An Act to authorize a further issue of exchequer bills for public works and fisheries and employment of the poor, and to amend the Acts relating thereto.
1 & 2 Vict. c. 88 -	An Act to authorize a further issue of exchequer bills for public works and fisheries and employment of the poor, and to amend the Acts relating thereto.
3 & 4 Vict. c. 10 -	An Act to authorize the issue of exchequer bills for public works and fisheries and employment of the poor.
5 & 6 Vict. c. 9 -	An Act to authorize the advance of money out of the Consolidated Fund, to a limited amount, for carrying on public works and fisheries and employment of the poor; and to amend the Acts authorizing the issue of exchequer bills for the like purposes.
9 & 10 Vict. c. 80 -	An Act to authorize the advance of money out of the Consolidated Fund for carrying on public works and fisheries and employment of the poor.
9 & 10 Vict. c. 83 -	An Act to empower the Commissioners for the Issue of Loans for Public Works and Fisheries to make loans in money to the Commissioners of Her Majesty's Woods in lieu of loans heretofore authorized to be made in exchequer bills.
12 & 13 Vict. c. 86	An Act to provide additional funds for loans by the Public Works Loan Commissioners for building workhouses in Ireland.
14 & 15 Vict. c. 23	An Act to authorize for a further period the advance of money out of the Consolidated Fund, to a limited amount, for carrying on public works and fisheries and employment of the poor.

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Session and Chapter.	Title or Short Title.
16 & 17 Vict. c. 40	The Public Works Loans Act, 1853.
19 & 20 Vict. c. 17	An Act to authorize for a further period the advance of money out of the Consolidated Fund for carrying on public works and fisheries and for the employment of the poor.
24 & 25 Vict. c. 80	*An Act the title of which begins with the words,*—An Act to authorize,—*and ends with the words,*—and for other purposes.
25 & 26 Vict. c. 30	*An Act the title of which begins with the words,*—An Act to amend an Act,—*and ends with the words,*—and for other purposes.
29 & 30 Vict. c. 72	*An Act the title of which begins with the words,*—An Act to authorize advances of money,—*and ends with the words,*—Labouring Classes Dwellings Act, 1866.
30 & 31 Vict. c. 32	*An Act the title of which begins with the words,*—An Act to authorize,—*and ends with the words,*—advances for public works.
35 & 36 Vict. c. 71	Public Works Loan Commissioners Act, 1872.
36 & 37 Vict. c. 49	An Act to authorize advances to the Public Works Loan Commissioners for enabling them to make loans to school boards, in pursuance of the Elementary Education Act, 1870, and to sanitary authorities, in pursuance of the Public Health Act, 1872.

THE PUBLIC WORKS LOANS ACT, 1876.

(39 & 40 Vict. Cap. 31) (*a*).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875.

[24th July, 1876.]

Whereas by the Public Works Loans Act, 1875, the Public Works Loan Commissioners are authorized to make loans for the purposes therein mentioned, and it is expedient to grant the money hereinafter mentioned for the purposes of such loans:

(*a*) See 38 & 39 Vict. c. 89, *ante*, p. 828.

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Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

I. This Act may be cited as the Public Works Loans (Money) Act, 1876.

Commencement of Act.

II. This Act shall come into operation on the first day of July, one thousand eight hundred and seventy-six.

III. (*b*.)

Amendment to Public Works Loans Act, 1875.

IV., V. (*c*.)

Explanation of 38 & 39 Vict. c. 89, s. 33, as to reduction of interest on loans to sanitary authorities.

VI. Whereas by section thirty-three of the Public Works Loans Act, 1875 (*d*), it is enacted that every sum payable in respect of a loan by the Loan Commissioners shall be compounded for and released only under the authority of Parliament in each case, and doubts have arisen whether the said enactment prevents the reduction of interest in accordance with section two hundred and forty-three of the Public Health Act, 1875, and section three of the Public Health (Scotland) Act, 1867, Amendment Act, 1875, on loans to a local authority in pursuance of the Sanitary Acts, and it is expedient to remove such doubts, and to authorize the Loan Commissioners to reduce the interest on loans made before the commencement of the Public Works Loans Act, 1875 : Be it therefore enacted as follows :

The Public Works Loan Commissioners may, on or before the 31st July, 1876, if they think it expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than four per centum per annum: Provided always, that nothing in the Public Works Loans Act, 1875, shall be deemed to take away or abridge the power of the Loan Commissioners under section two hundred and forty-three of the Public Health Act, 1875, and section three of the Public Health (Scotland) Act, 1867, Amendment Act, 1875, to reduce, if they think fit, any interest payable on any such loan to a local authority as is in those sections mentioned.

38 & 39 Vict. c. 55.
38 & 39 Vict. c. 74.

Explanation of ss. 18, 50, of 38 & 39 Vict. c. 89.

VII. Whereas by sections eighteen and fifty of the Public Works Loans Act, 1875 (*e*), provisions are made for the application of that Act notwithstanding any special Act or any rule of law or custom, and

(*b*) Section 3 was repealed by the Statute Law Revision Act, 1883.
(*c*) Sections 4 and 5 apply to local matters only.
(*d*) *Ante*, p. 828.
(*e*) See the sections referred to, *ante*, pp. 834, 844.

Appndx. doubts have arisen whether such provisions extend to any Act relating to a person having power to borrow money from the Public Works Loan Commissioners, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Sections eighteen and fifty of the Public Works Loans Act, 1875, shall be construed as if "special Act" in those sections included any Act relating to any person having power to borrow money from the Public Works Loan Commissioners.

VIII. (*a*.)

THE COMMONS ACT, 1876.

(39 & 40 Vict. Cap. 56) (*b*).

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons.

[11th August, 1876.]

Whereas by the Inclosure Acts, 1845 to 1868, upon the application and with the consent of such of the persons interested in any common as in the said Acts in that behalf specified, the Inclosure Commissioners are empowered by provisional order under their seal to authorize the inclosure of such common, provided such inclosure is made on such terms and conditions as may appear to the commissioners to be proper for the protection of any public interests, and provided also that the commissioners are of opinion that such inclosure would be expedient, having regard as well to the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be inclosed, or any part thereof, may be situate (hereinafter included under the expression the benefit of the neighbourhood), as to the advantage of the persons interested in the common to which such application relates (hereinafter included under the expression private interests); but such provisional order is of no validity until and unless the commissioners have in a report to be laid before Parliament certified that in their opinion the inclosure of such common, if made on the terms and conditions in their provisional order expressed, would be expedient, having regard to the benefit of the neighbourhood as well as to such private interests as aforesaid, nor until and unless an Act of Parliament has been passed confirming such order and affirming such certificate as aforesaid, and directing that the proposed inclosure of the common should be proceeded with accordingly.

(*a*) This section was repealed by the Statute Law Revision Act, 1883.

(*b*) This Act confers on urban sanitary authorities important powers and duties with respect to suburban commons.

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And whereas by the said Inclosure Acts, information is required to be supplied and inquiries to be made for the purpose of enabling the Inclosure Commissioners to judge of such expediency as aforesaid, but it is desirable to make further provisions for bringing under the notice of the said commissioners, and of Parliament, any circumstances bearing on the expediency of allowing the inclosure of a common, and that inclosure in severalty as opposed to regulation of commons should not be hereinafter made unless it can be proved to the satisfaction of the said commissioners and of Parliament that such inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in any such commons:

And whereas by the said Inclosure Acts the Commissioners are empowered in the case of a common being waste land of a manor to require, and in their provisional order to specify as one of the conditions of inclosure, the appropriation of an allotment for the purposes of exercise and recreation by the inhabitants of the neighbourhood, and also an allotment for the labouring poor, and it is expedient to give further effect to the provisions relating to the said allotments (in this Act referred to as allotments for recreation grounds and field gardens):

And whereas it is expedient to give further facilities for enabling the Inclosure Commissioners to regulate, improve, stint, and otherwise deal with commons without wholly inclosing and allotting the same in severalty:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited for all purposes as The Commons Act, 1876.

Part I.

Law as to the Regulation and Inclosure of Commons.

Applications in relation to Commons.

Alternative provisional order for regulation or inclosure of commons.

II. The Inclosure Commissioners may entertain an application made in manner in this Act mentioned for a provisional order—

(1.) For the regulation of a common; or

(2.) For the inclosure of a common or parts of a common;

Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the provisional order.

The commissioners shall not proceed to carry any application under

Appndx. this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value of such interests in the common as are proposed to be affected by the provisional order.

"Regulation of common" includes adjustment of rights and improvement.

III. A provisional order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression "adjustment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the provisional order by Parliament.

Explanation of adjustment of rights.

IV. The adjustment of rights in respect of a common comprises for the purposes of this Act all or any of the following things:

(1.) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;

(2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition, of all or any of such rights which may permanently injure the common;

(3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money, —the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land;

(4.) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land; and

(5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising

between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Explanation of improvement.

V. The improvement of a common comprises for the purposes of this Act all or any of the following things; that is to say,

(1.) The draining, manuring, or levelling the common; and

(2.) The planting trees or parts of such common, or in any other way improving or adding to the beauty of the common; and

(3.) The making or causing to be made bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the common; and

(4.) The general management of such common.

(5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

Meaning of provisional order for inclosure of commons.

VI. A provisional order for the inclosure of a common means a provisional order for enclosing the common as provided by the Inclosure Acts, 1845 to 1868, as amended by this Act.

Provisions for the benefit of a neighbourhood applicable alike to orders for regulation and orders for inclosure.

VII. In any provisional order in relation to a common, the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit, insert in any such order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case; that is to say,

(1.) That free access is to be secured to any particular points of view; and

(2.) That particular trees or objects of historical interest are to be preserved; and

(3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common; and

(4.) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and

(5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Suburban Commons.

Sanitary authorities to be represented in the case of

VIII. Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within six miles of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as

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commons in the neighbourhood of towns.

may be on the *urban sanitary authority* or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners, and to make to him or them, at any time during the proceedings in relation to obtaining a provisional order under this Act, such representations as they may think fit with respect to the expediency or inexpediency of such application, regard being had to the health, comfort, and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners, enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without license in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners in pursuance of this Act, and any rights in such a common (*a*).

They may also in the case of any such suburban common purchase and hold as aforesaid, with a view to prevent the extinction of the rights of common, any saleable rights in common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the provisional order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the Public Health Act, 1875 (*b*), and not otherwise provided for.

A town for the purposes of this section means any municipal borough,

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(*a*) This power is extended to the Metropolitan Board of Works by 41 & 42 Vict. c. 71.

(*b*) *Ante*, p. 233.

or Improvement Act district, or Local Government district, having a population of not less than five thousand inhabitants.

The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

Procedure.

Issue of forms by commissioners.

IX. The Inclosure Commissioners shall from time to time, upon application made by the persons interested in any common, issue in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1868, as amended by this Act are to be made to the commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners.

Rules as to application to commissioners.

X. The following rules shall be observed with respect to an application to the Inclosure Commissioners for a provisional order for the regulation or inclosure of a common; that is to say,

Publication of notices of application.

(1.) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such provisional order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice: Provided that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:

Manner of application.

(2.) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustments of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners may from time to time direct:

Evidence to be furnished in support of application.

(3.) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners, in answer to questions previously submitted or otherwise in such manner as the said commissioners may from time to time direct, with information bearing on the expediency of the

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application considered in relation to the benefit of the neighbourhood as well as to private interests:

Evidenc relation to benefit of neighbourhood.

(4.) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site, extent, and suitableness of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and, if acceded to, as to what statutory provisions as defined by this Act ought to be inserted in the provisional order for the benefit of the neighbourhood:

The Inclosure Commissioners shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood:

Evidence in relation to private interests.

(5.) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following; that is to say, as to the extent and nature of the common to which the application relates; as to the mines, minerals, or valuable strata (if any) under the same; as to the questions of boundary (if any) concerning such common, or such mines, minerals, or strata; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application; as to the nature of the rights requiring the intervention of the Inclosure Commissioners or the interference of Parliament; as to the supposed advantages of the application being acceded to; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the provisional order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the provisional order for the protection of private interests:

(6.) The Inclosure Commissioners shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an assistant commissioner, that a *primâ facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local inquiry to be held by an assistant commissioner. Duty of commissioners on application.

XI. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners. Rules as to local inquiry.

(1.) The assistant commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common: Provided always, that one at least of such public meetings shall be held in the evening between the hours of seven and ten of the clock. Inspection and public meeting.

(2.) The assistant commissioner shall give not less than twenty-one days notice of his intention to hold the first of such meetings. Notice of meeting.

(3.) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the assistant commissioner to hear all persons desirous of being heard on the subject matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject matter of the inquiry. Contents of notice.

(4.) The notice shall be given— Publication of notice.

(*a.*) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate; and

(*b.*) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted; and

(*c.*) By advertising in such manner as the Inclosure Commissioners may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.

(5.) The assistant commissioner shall preside and regulate the proceedings at such meetings, and shall hear all persons desirous of being heard in relation to the subject matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity. Conduct of meeting.

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Personal inquiries by assistant commissioner.

(6.) The assistant commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners or may think it advisable to do, for the purpose of enabling the commissioners to judge as to the expediency of making the provisional order applied for, also as to the nature of the provisions to be inserted in any such provisional order if made.

Report of assistant commissioner to Inclosure Commissioners.

(7.) The assistant commissioner shall report in writing to the Inclosure Commissioners the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners may from time to time direct), and specially shall report to the Inclosure Commissioners the information obtained by him as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Inclosure Commissioners.

He shall also report the number of persons who attended the meeting held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the provisional order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners to judge of the expediency of making the provisional order, having regard as aforesaid, and also if the order be made of the provisions to be inserted therein.

Map to accompany report.

(8.) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners, with a sketch in the case of an inclosure of a common being waste land of a manor, of the allotments (if any) proposed to be made, for recreation grounds and field gardens, or for either of such purposes.

Rules as to provisional orders.

XII. The following rules shall be observed with respect to provisional orders to be made by the Inclosure Commissioners; that is to say (*a*),

Draft provisional order to be framed.

(1.) The Inclosure Commissioners, if satisfied by the report of the assistant commissioner or by further inquiries to be made by themselves or an assistant commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame, in such form and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of provisional order applied for, a draft

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(*a*) In addition to these provisions the commissioners may insert in the order a provision for the raising and payment of expenses of and incidental to the regulation of the common, either wholly or partly, by a sale of a portion of the common, specifying the situation and maximum quantity sold: the expenses to be raised and paid in manner provided by the Inclosure Acts, 1845 to 1868. 41 & 42 Vict. c. 56, s. 2. They may also specify in any provisional order for the regulation of a common, as one of the terms and conditions of the regulation, the appropriation of an allotment for the labouring poor, in which case the provisions of the Inclosure Acts, 1845 to 1876, as to allotments made on enclosures of a common, are to apply. *Ib.* s. 4.

provisional order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force :

Provisions for benefit of neighbourhood.

(2.) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft provisional order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case ; also, if the order is an enclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens :

Provisions for protection of private interests.

(3.) With respect to private interests, there shall be inserted in such draft provisional order, (1) where the interests of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected ; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts, 1845 to 1868, or as may appear to the Inclosure Commissioners proper to be inserted ; also, if there are any other rights which appear to the commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf :

Deposit of draft order for consideration of parties interested.

(4.) As soon as may be after making their draft provisional order, the Inclosure Commissioners shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto :

Consents before provisional order certified to be expedient.

(5.) The Inclosure Commissioners shall not certify the expediency of a draft provisional order unless they are satisfied that persons representing at least two-thirds in value of such interests in the common as are affected by the order consent thereto ; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then, unless there is more than one person interested in such manor according to the definition of the Inclosure Act, 1845, the commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said Inclosure Act, 1845, consent to such order ; and where there is more than one person interested in such manor the commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the commissioners :

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Reservation in favour of freemen interested in common.

(6.) Where the freemen, burgesses, or inhabitant householders of any city, borough, or town are entitled to rights of common or other interest in the common to which the draft provisional order relates, the Inclosure Commissioners shall not certify the expediency of such order unless it appears to the commissioners that two-thirds in number of such of the freemen and burgesses so entitled as may be resident in such city, borough, or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the order; and in case two-thirds in number of such resident freemen and burgesses, or of such inhabitant householders, have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:

Means of obtaining consents.

(7.) The Inclosure Commissioners may cause a meeting or meetings to be held by an assistant commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interest of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:

Power to modify provisional order before expediency certified.

(8.) The Inclosure Commissioners may, at any time before certifying the expediency of a draft provisional order, modify the same, of their own mere motion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft provisional order originally deposited by the commissioners:

Certificate of expediency of provisional order.

(9.) When the necessary consents have been obtained to any draft provisional order as originally deposited, or as modified in pursuance of this Act, such order shall be deemed to be final; and the Inclosure Commissioners shall in a report or reports to be made from time to time, as respects each provisional order which has become final as aforesaid, certify that it is expedient that such provisional order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each provisional order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such order, state the information furnished to them as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the commissioners; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the commissioners may think it expedient to state for such purposes as aforesaid:

Confirmation of provisional order.

(10.) Every report made by the Inclosure Commissioners certifying the expediency of any provisional order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any order for the regulation or inclosure of a common, the expediency of which has been

so certified by the commissioners, shall be confirmed, the regulation or inclosure of any common to which any such order relates shall be proceeded with and completed according to the terms of the provisional order relating to such common, and to the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a provisional order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever :

Supplemental power to modify provisional order after expediency certified.

(11.) If, after the presentation to Parliament of a report made by the Inclosure Commissioners certifying the expediency of any provisional order for the regulation or inclosure of a common, and before a bill has been brought in for the confirmation of such order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such provisional order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the provisional order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft provisional order originally deposited by the commissioners :

And it shall be the duty of the commissioners to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the commissioners shall make a special report to the effect that the order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the order so modified shall be deemed to be in the same position in all respects as if it were an order in respect of which a report had been made by the commissioners certifying the expediency thereof, and such report had been presented to Parliament.

Partial application of procedure under Inclosure Acts.

XIII. The Inclosure Commissioners may insert in any provisional order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, shall apply accordingly.

Power to raise money for improvement of common.

XIV. A provisional order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the commissioners think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of

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any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common (*a*).

Supplemental Provisions.

Owners may make bye-laws.

XV. The majority in value of the owners of skirts or rights of pasture in any regulated pasture created under the provisions of the General Inclosure Act, 1845, in addition to the powers they now possess, are hereby authorized at any annual meeting for the election of field reeves to make bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management, occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such bye-laws.

Provision as to bye-laws.

XVI. Any bye-law made in pursuance of this Act, and any alteration made therein, and any revocation of a bye-law, shall not be of any validity until it has been confirmed by one of Her Majesty's principal Secretaries of State.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such bye-laws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of forty shillings.

Notice of application for confirmation of bye-laws.

XVII. No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section, has been published by the conservators one month at least before the application.

During one month at least before the application a copy of every bye-law, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such bye-law open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

Provision as to certain expenses under order for regulation of a common.

XVIII. Subject to the terms of the provisional order the amount of any compensation to be paid for any restriction, modification, or abolition of rights in pursuance of an order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly.

Definition of power of Charity Commissioners in certain cases.

XIX. Whereas by several awards made under the authority of Inclosure Acts, prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments:

(*a*) The provisional order must specify the situation and maximum quantity so sold. The proceeds may, if the order so provides, be invested, and the income applied towards the improvement or protection of the common; and the order may also provide for the sale of all or part of the investment and the application of the proceeds for the like purpose. 41 & 42 Vict. c. 56, s. 3.

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And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons:

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted, that after the passing of this Act, notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorize the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorize the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of "The Charitable Trusts Act, 1860," for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided, that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorize the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

Gravel digging.

XX. After the passing of this Act, where any common is regulated pursuant to this Act by a provisional order of the Inclosure Commissioners confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of "The Metropolitan Commons Act, 1866," or "The Metropolitan Commons Amendment Act, 1869," or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts, or trustees of any turnpike road, shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

Part II.

Amendment of the Inclosure Acts.

Field Gardens and Recreation Grounds.

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Expenses of clearing, draining, and fencing field gardens.

XXI. Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted, that the valuer shall, unless the Inclosure Commissioners otherwise direct, cause every allotment made for a field garden to be cleared, drained, fenced, levelled, and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

Substituted allotments for recreation grounds and field gardens.

XXII. The provisions of the Inclosure Acts, 1845 to 1868, which authorize the Inclosure Commissioners to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorize them to allow the allotment of land of equal value although it may not be of equal quantity.

Situation of allotments for recreation grounds and field gardens.

XXIII. Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated, and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

Field gardens to be free of rentcharge.

XXIV. There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rentcharge, and every such allotment made after the passing of this Act shall be made free of any such rentcharge.

Allotments for recreation grounds to be vested in churchwardens and overseers.

XXV. There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as provides that an allotment made for the purpose of a recreation ground may be allotted to any person entitled to an allotment under the inclosure, and every such allotment made after the passing of this Act shall be vested in the churchwardens and overseers for the time being of the parish in which the same shall be situate, and shall be held by them as provided by the Inclosure Acts, 1845 to 1868.

Amendment of law as to letting field gardens.

XXVI. Whereas by the Inclosure Act, 1845, allotment wardens are required to let the allotments under their management to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, and are further required to demand in respect of such letting a rent not below the full yearly value of the land to be ascertained in manner in the said Act mentioned; and whereas it is expedient to amend the said provisions: Be it enacted that allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same or any unlet portion thereof, in gardens not exceeding an acre each, to such inhabitants as aforesaid: Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rentcharge, and the rentcharge charged on the said allotments under the provisions of "The General Inclosure Act, 1845," but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens.

Application of surplus rents of recreation grounds and field gardens.

XXVII. Whereas by section seventy-three of the Inclosure Act, 1845, the surplus rents arising from recreation grounds are applicable in aid of the rates for the repair of the public highways in the parish or respective parishes in which the said grounds are situate, and by section one hundred and twelve of the same Act the surplus rents arising from field gardens are payable to the overseers of the poor in aid of the poor rates of the parish: And whereas it is expedient to amend the said provisions: Be it enacted, that the surplus rents arising from recreation grounds shall from and after the passing of this Act cease to be applied in manner provided by the said seventy-third section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood (*a*); and the surplus rents arising from field gardens shall, from and after the passing of this Act, cease to be applied in manner provided by the said one hundred and twelfth

(*a*) And also to the improving of any of the field gardens to which this section applies, in the same parish or neighbourhood, or maintaining the drainage and fencing thereof. 42 & 43 Vict. c. 37, s. 2.

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section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided that the Inclosure Commissioners shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.

Reports to be made by managers of recreation grounds and field gardens.

XXVIII. The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners direct, make such reports to the said commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the commissioners may require.

Amendment of law as to town and village greens.

XXIX. Whereas by the Inclosure Act, 1857, provision is made for the protection of town and village greens, and recreation grounds, and it is expedient to amend such provision: Be it enacted as follows, that is to say, an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the said Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

Jurisdiction of county court in respect of illegal inclosures.

XXX (*a*). A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

(*a*) Sections 30 and 31 are extended to metropolitan commons by 41 & 42 Vict. c. 71, s. 3.

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Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

Three months notice of claim to inclose to be given in the local papers.

XXXI. Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

Appointment of valuer to be confirmed by commissioners.

XXXII. An appointment of a valuer after the passing of this Act shall not be valid until it has been confirmed by the commissioners. The commissioners may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the commissioners) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the commissioners is appointed.

General Amendment.

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Extension of section 105 of the Inclosure Act, 1845, as to exchanges and partitions.

XXXIII. The provisions of section one hundred and five of the Inclosure Act, 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange, partition, and division of intermixed lands carried into effect in pursuance of the Inclosure Acts, 1845 to 1868, by separate orders, and not included in an award of inclosure.

Part III.

Miscellaneous.

Repeal of certain parts of the Inclosure Act, 1845, and amendment of law as to reports.

XXXIV. *There shall be repealed so much of section thirty of the Inclosure Act,* 1845, *as prescribes a limit to the quantity of land to be allotted to recreation grounds; also the twenty-fourth, twenty-fifth, twenty-sixth, and twenty-seventh sections of the Inclosure Act,* 1845, *and* (*a*) the Inclosure Commissioners shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient.

Act not to apply to metropolitan commons.

XXXV. This Act, save as herein expressly provided, shall not apply to any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 and 1869.

A common regulated under Act not to be inclosed without sanction of Parliament.

XXXVI. Where an Act of Parliament has been passed confirming a provisional order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

Definitions.

Definitions.

XXXVII. In this Act, unless the context otherwise requires, —

"A common" means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868:

"Waste land of a manor" means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of

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(*a*) This section was repealed down to this point by the Statute Law Revision Act, 1883.

common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints:

"Person" includes a body corporate:

"Inclosure Acts, 1845 to 1868," means the Acts mentioned in the schedule hereto, and each of the Acts mentioned in the said schedule may be cited by the short title in such schedule in that behalf mentioned; and the above mentioned Acts together with this Act may be cited as "The Inclosure Acts, 1845 to 1876:"

"Municipal borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same (*b*):

"Improvement Act district" means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town:

"Local government district" has the same meaning as it has in the Public Health Act, 1875.

SCHEDULE.

Year and Chapter.	Title.	Short Title.
8 & 9 Vict. c. 118.	An Act to facilitate the inclosure and improvement of commons and lands held in common, the exchange of lands, and the division of intermixed lands; to provide remedies for defective or incomplete executions, and for the non-execution of the powers of general and local Inclosure Acts, and to provide for the revival of such powers in certain cases.	The Inclosure Act, 1845.
9 & 10 Vict. c. 70.	An Act to amend the Act to facilitate the inclosure and improvement of commons.	The Inclosure Act, 1846.

(*b*) Now the Municipal Corporations Act, 1882; see section 242 of that Act.

SCHEDULE—*continued.*

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Year and Chapter.	Title.	Short Title.
10 & 11 Vict. c. 111.	An Act to extend the provisions of the Act for the inclosure and improvement of commons.	The Inclosure Act, 1847.
11 & 12 Vict. c. 99.	An Act to further extend the provisions of the Act for the inclosure and improvement of commons.	The Inclosure Act, 1848.
12 & 13 Vict. c. 83.	An Act further to facilitate the inclosure of commons and the improvement of commons and other lands.	The Inclosure Act, 1849.
14 & 15 Vict. c. 53.	An Act to consolidate and continue the copyhold and inclosure commissions, and to provide for the completion of proceedings under the Tithe Commutation Acts.	The Inclosure Commissioners Act, 1851.
15 & 16 Vict. c. 79.	An Act to amend and further extend the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1852.
17 & 18 Vict. c. 97.	An Act to amend and extend the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1854.
20 & 21 Vict. c. 31.	An Act to explain and amend the Inclosure Acts.	The Inclosure Act, 1857.
22 & 23 Vict. c. 43.	An Act to amend and extend the provisions of the Acts for the inclosure, exchange and improvement of land.	The Inclosure Act, 1859.
31 & 32 Vict. c. 89.	An Act to alter certain provisions in the Acts for the commutation of tithes, the Copyhold Acts, and the Acts for the inclosure, exchange, and improvement of land, and to make provision towards the expense of the copyhold, inclosure, and tithe office.	The Inclosure, &c., Expenses Act, 1868.

THE RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 Vict. Cap. 75.)

An Act for making further Provision for the Prevention of the Pollution of Rivers. [15th August, 1876.]

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WHEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution (*a*):

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. This Act may be cited for all purposes as "The Rivers Pollution Prevention Act, 1876" (*b*). Short title of Act.

PART I.

Law as to Solid Matters.

II. Every person (*c*) who puts, or causes to be put, or to fall or knowingly permits (*d*) to be put, or to fall or to be carried into any stream (*e*), so as either singly or in combination (*f*) with other similar acts of the same, or any other person to interfere with its due (*g*) flow, or Prohibition as to putting solid matters into streams.

(*a*) The provisions of the Act exceed this preamble inasmuch as they not only provide against the pollution of rivers, but also against their obstruction by the placing of solid matters therein.

(*b*) Sanitary authorities will derive considerable assistance in construing this Act from the circular of the Local Government Board issued 6th August, 1877, and set out at p. 481 of *Glen's Local Government Orders.*

(*c*) Note that the definition of section 20, *post*, extends this word to any body of persons corporate or unincorporate. Hence associations, or companies, or partners may be answerable as well as individuals.

(*d*) In *Hipkins* v. *The Birmingham and Staffordshire Gas Light Company*, 5 H. & N. 74; 6 H. & N. 250, the word suffer, which has much the same signification as permit, was held to apply to involuntary omission to prevent. Here there is a limitation, as the permission must be with knowledge which implies will.

(*e*) See the definition in section 20, *post.*

(*f*) It is not intended by this word to imply any conspiracy or joint action. It is apparently intended to refer to simultaneous action: so that if one manufacturer cast his refuse into the stream with little effect, yet if at the same time other manufacturers cast their refuse therein, the mischief would arise and each would be responsible.

(*g*) These words require attention. The flow of a stream raises two considerations, first, as to the velocity of the stream, secondly, as to its course or channel. The velocity and the channel must not be impeded. That is, the stream must not be made to run slower, neither must it be diverted from its

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to pollute (*a*) its waters, the solid refuse of any manufactory, manufacturing process or quarry (*b*), or any rubbish or cinders, or any other waste (*c*) or any putrid solid matter (*d*), shall be deemed to have committed an offence (*e*) against this Act (*f*).

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose (*g*).

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proper channel. The word due signifies its natural flow. In the case of a pure undisturbed stream the natural flow would be ascertained easily, but the case will be different where a stream has long been the subject of impediment. Does the statute contemplate the existing state of things, prohibiting any further impediment, or does it refer back to the original state of the stream and require the original flow to be restored and kept up? This latter alternative will generally be so impracticable that the former seems the preferable construction.

(*a*) See in section 20, *post*, what is not polluting. It will be remembered that 38 & 39 Vict. c. 55, s. 68, *ante*, p. 77, provides for the pollution of water by gas washings.

It appears from the cases of *Filbey* v. *Coombe*, 2 M. & W. 677, and *Law* v. *Dodd*, 1 Exch. 845, that the refuse of a manufactory is that which the manufacturer himself contemplated as rubbish.

(*b*) Section 4, *post*, provides for mines.

(*c*) Does this word waste apply to the following word matter? Apparently not.

(*d*) See in section 20, *post*, the limitation to be put upon the words "solid matter."

(*e*) Although this section creates this offence the statute does not make the commission criminal so as to render the party subject to any penalty. It is provided that the county court may restrain the continuance of the offence, and make an order, and if such order be disobeyed the offender will be liable to a penalty; but this is all.

Where a statute prohibits an act and provides no penalty the person who commits the act is liable to be indicted for a common law misdemeanor, but that rule cannot be held to apply here as the statute contains a remedy.

The acts mentioned in the section when committed in navigable rivers will generally be such nuisances as will subject the person committing them to prosecutions for nuisances, and such prosecutions may still be instituted though they afford but indifferent remedies, and are generally very costly.

(*f*) Reference must be made to section 17, *post*, which prevents the Act from applying to the lawful exercise of any rights of impounding or diverting water.

Thus, in *Smith* v. *Barnham*, 34 L. T. 775, a local Act having prohibited persons from wilfully throwing rubbish into a stream the Appellate Division of the High Court of Justice were disposed to hold that where a person exercised a right claimed by many years' enjoyment to cast the refuse of a tannery into the stream, he was not to be considered as wilfully casting rubbish therein within the operation of the clause. The point was not, however, distinctly decided.

(*g*) This would be lawful in prosecutions for nuisances.

Part II.

Law as to Sewage Pollutions.

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Prohibition as to drainage into stream of sewers.

III. Every person (*h*) who causes to fall or flow, or knowingly permits (*i*) to fall or flow, or to be carried into any stream (*k*), any solid or liquid sewage matter (*l*), shall (subject as in this Act mentioned) (*m*), be deemed to have committed an offence against this Act (*n*).

Where any sewage matter falls, or flows, or is carried into any stream along a channel used, constructed, or in process of construction, at the date of the passing of this Act for the purpose of conveying such sewage matter, the person (*a*) causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case (*o*) that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream (*p*).

(*h*) See the definition in section 20. A sanitary authority may be brought within the operation of this section.

(*i*) See note (*d*) on section 2, *ante*,

(*k*) See the definition in section 20, *post*, where it will be seen how far sewers draining into the sea or tidal waters are affected by those enactments.

(*l*) What is sewage matter? There is no definition in this Act nor in the Public Health Act, 1875, nor elsewhere. It appears to be properly the matter which is contained in a sewer. Now, in *Sutton* v. *The Mayor of Norwich*, 31 L. T. 389, Kindersley, V.-C., observed that "in the common sense of the term a sewer means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality." Hence sewage matter appears to be feculent matter, and this is supported by the 17th section of 38 & 39 Vict. c. 55, *ante*, p. 31, where the words used are sewage and filthy water.

It will be observed that it is not necessary to prove that any injurious effect has followed from the act referred to.

The occupier of any premises will be answerable for the acts of his household, if he knowingly permits the sewage to fall into the stream, and this knowledge will be readily presumed from the state of the premises.

(*m*) See the restrictions on the proceeding in section 13, *post*. The saving in section 17 can have no operation upon this section. Hence no prescriptive right or license under grant will be available against this statutory prohibition.

(*n*) Here also no penalty is imposed, but the application must be made to the county court to prevent the continuance of the offence. It must be noticed, however, that the person who thus acts may be liable to prosecution under 38 & 39 Vict. c. 55, s. 91, *ante*, p. 92, and thereby rendered liable to a penalty.

(*o*) He cannot have the benefit of this provision until he is taken before the court, but he will be entitled to notice of the intended proceedings under section 13, *post*.

(*p*) A certificate from the inspector, under section 12, will prove this fact. In an appeal under this Act, the case stated that a sanitary authority was and had been, for a long period before the passing of the Act, sending a large quantity of sewage into a watercourse which joined a larger stream, the water in which above the junction was available for most primary purposes, and that the combined stream fell into the sea three miles below the junction. The effect of this flow of sewage was, that in the summer months the greater

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Where the Local Government Board are satisfied after local inquiry (*a*) that further time ought to be granted to any sanitary authority (*b*), which at the date of the passing of this Act is discharging sewage matter into any stream (*b*), or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed (*c*) by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person, other than a sanitary authority, shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream (*d*) along a drain (*e*) communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing (*f*).

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part of the contents of the combined stream was foully polluted. The case, while it contained the statement that the combined stream had been for more than forty years carrying more or less polluted matter to the sea, also stated that the pollution had been largely increased within the last twenty years. It was held that although the tributary stream was, at the date of the Act "mainly used as a sewer" (see section 20, *post*), and was therefore excepted from the operation of the Act, the stream into which it flowed was not so used, and that therefore the pollution of the latter must be prevented. *Portobello, Magistrates of*, v. *Edinburgh, Magistrates of*, 10 Ct. of Sess. Cas. 4th series, 130.

(*a*) See 38 & 39 Vict. c. 55, Part IX., *ante*, p. 345, as to the local inquiries of the Local Government Board.

(*b*) See the definition in section 20, *post*.

(*c*) This section does not authorize the withdrawal or rescinding of the order. Hence probably the board will generally make the order for a short period.

The order will be made upon application from the sanitary authority, who should apply in writing, on folio foolscap paper, addressed to the President of the Board, under cover directed to the secretary. There should be a concise statement of the circumstances which induce the sanitary authority to make the application.

It will be seen by reference to section 13, that no proceedings can be taken under this Act until twelve months after its date, but nevertheless the application should be made without loss of time.

(*d*) See the definition in section 20, *post*.

(*e*) See the definition of a drain in 38 & 39 Vict. c. 55, s. 4, *ante*, p. 13.

(*f*) It is presumed that those words have a retrospective operation and apply to the sanction given tacitly or actually to communications made before the Act, as well as to cases where drains are made hereafter to communicate with sewers. The sanitary authority will be responsible for the sewer itself.

It will be remembered that the communication of the drain with the sewer has often been the result of compulsion authorized by the statutes.

Part III.

Law as to Manufacturing and Mining Pollutions.

Prohibition as to drainage into streams from manufactories.

IV. Every person (*g*) who causes to fall or flow or knowingly permits (*h*) to fall or flow, or to be carried into any stream (*i*) any poisonous, noxious, or polluting (*k*) liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) (*l*) be deemed to have committed an offence against this Act (*m*).

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed (*n*) in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act, if he shows (*o*) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably (*p*) available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

Prohibition as to drainage into stream from mines.

V. Every person (*q*) who causes to fall or flow, or knowingly permits (*r*) to fall or flow, or to be carried into any stream (*r*) any solid matter from any mine in such quantities as to prejudicially (*s*) interfere

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(*g*) See the definition in section 20, which includes bodies of persons as well as individuals.

(*h*) See note (*d*) on section 2, *ante*.

(*i*) See the definition in section 20, *post*.

(*k*) These three words must have separate meanings: poisonous implies destruction to life, human or animal; noxious is lower in degree and signifies some injury, but not of necessity immediately dangerous to life; polluting will include both the other qualities and also what is foul and offensive to the senses, except innocuous discoloration, as to which see section 20.

This section applies to a liquid only, as there is no reference here to the obstruction of the stream.

(*l*) See section 13, *post*.

(*m*) See note (*k*) on section 2, *ante*.

(*n*) This channel may be constructed at any time hereafter; but it must be carefully noticed that the new channel must be a substitutional one. No exemption is given to any other new channel.

(*o*) See note (*o*) on section 3, *ante*.

(*p*) This word is not in section 3. There is so much difficulty in dealing with these subjects that the manufacturer is not required to guarantee the absolute success of the means which he has adopted. He will be protected if he uses means which in the judgment of skilled persons may reasonably be expected to remove the mischief although in fact they do not do so.

(*q*) See the definition in section 20, *post*.

(*r*) See note (*d*) on section 2, *ante*.

(*s*) It is to be observed that this word does not occur in section 2. What is its force here? Can the due flow of the stream be interfered with otherwise than prejudicially? In mining districts this may be the case. It may be of no importance that the course of the stream is slackened, or that the channel

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with its due flow, or any poisonous, noxious, or polluting (*a*) solid or liquid matter proceeding from any mine (*b*), other than water in the same condition as that in which it has been drained or raised from such mine (*c*), shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows (*d*) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably (*e*) available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing, or carried into the stream (*f*).

Restriction on proceedings under this part of the Act.

VI. Unless and until Parliament otherwise provides (*g*) the following enactments shall take effect :—

Proceedings shall not be taken against any person under this part of this Act (*h*) save by a sanitary authority (*i*), nor shall any such proceedings be taken without the consent of the Local Government Board :

Provided always, that if the sanitary authority, on the application of any person interested (*k*) alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government

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is widened or changed. Hence it will be necessary to prove some actual prejudice to individuals from the interference. See note (*g*) in section 2, as to the due flow.

(*a*) See note (*k*) on section 4 with reference to these words, and the limitation as to polluting in section 20, *post*.

In section 20 it is provided that solid matter shall not include particles of matter in suspension, but such matters would appear to fall under the term liquid matters, and if so, they would be within the provision of this section.

(*b*) It must be noticed that section 2 applies to quarries. And the term mine applies to some underground work. This was the meaning given to the word in the decisions of the courts upon the rating of mines.

(*c*) It will be immaterial how poisonous or polluted this water may be, so long as its original condition remains unchanged. If it come into contact with other substances in the mine which may affect its condition, the exemption will cease, and if in an altered state it flows into any stream with the knowledge and permission of the mine owner an offence will be committed.

(*d*) See note (*o*) on section 3, *ante*.

(*e*) See note (*p*) on p. 877, *ante*.

(*f*) Reference should be made to the saving in section 17, *post*.

(*g*) These words indicate that this provision is of a tentative character, because future legislation could of course prevent the continuance of this enactment, and the words have in themselves no definite legal operation.

(*h*) It must be noticed that this section is limited to the cases of manufacturing pollutions and mining obstructions and pollutions.

(*i*) See the definition in section 20, *post*.

(*k*) What will constitute an interest is a question of some nicety. A riparian owner or occupier will be interested, so also will an inhabitant who draws water from the polluted stream; and it seems that if the stream be polluted within the district, the complainant need not be an inhabitant, or a ratepayer within it. But is an inhabitant of the district, as such, a person interested? Seeing the effect of polluted streams upon the general health of a district, it will probably be held that he is.

If the object of the complainant is to obtain only a settlement of a disputed private right, the Local Government Board will doubtless refuse to interfere.

Board (*l*), and if that Board on inquiry (*m*) is of opinion that the sanitary authority should (*n*) take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality (*o*).

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry (*p*), unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably (*q*) practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry (*r*).

Any person (*s*) within such district as aforesaid (*t*), against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes (*v*).

(*l*) This application should be made on folio foolscap paper, addressed to the president of the Local Government Board under cover addressed to the secretary. It should set forth the circumstances of the case, the applicant's interest, his complaint to the sanitary authority, and their refusal. It should also communicate reasonable means of proving the alleged offence.

(*m*) The 38 & 39 Vict. c. 55, Part IX., *ante*, p. 345, provides for the inquiries of the Local Government Board.

(*n*) This implies that an offence has been committed, and that there is sufficient means of proving it. The sanitary authority are compellable to commence proceedings, but if they should refuse to do so, alleging and showing that they have not adequate means of prosecuting them with success, the High Court of Justice would probably refuse to enforce this direction.

The following part of the section shows that notwithstanding the direction of the board the sanitary authority may, under certain circumstances, abstain from taking proceedings.

(*o*) This is only a guide to the board, pointing out how they are to exercise their discretion, but the direction is very vague.

(*p*) These are also words of much vagueness. How are the board to determine what is the seat of a manufacturing industry? And what is the definition of "a manufacturing industry?" This will be ascertained by reference to the subjects of this particular part of the Act. The industry will be such as produces the kind of pollutions here dealt with, and though only manufacturing industry is mentioned, doubtless mining industry falls within the meaning of this part of the section.

(*q*) It will be noticed that this adverb is placed before "practicable" and therefore governs both adjectives, but probably the effect will be the same as in the last section, upon which see note (*p*) in p. 877.

(*r*) This consideration will frequently cause much embarrassment to the board. The materiality of the injury will be difficult to measure.

It seems to be intended that if material inquiry would be inflicted by the proceedings they are not to be allowed under any circumstances.

(*s*) See the definition in section 20, *post*.

(*t*) This district must be one which is the seat of a manufacturing industry.

(*v*) It is presumed that this provision applies to mines.

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The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses (*a*), and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken.

And where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities (*b*) to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

Part IV.

Administration of Law.

Sanitary authority to afford facilities for factories draining into sewers.

VII. Every sanitary or other (*c*) local authority having sewers under their control shall (*d*) give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers :

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view (*e*) :

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only

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(*a*) No power is given to the sanitary authority to examine these witnesses on oath.

(*b*) This prohibition does not apply to persons aggrieved, because they cannot take proceedings under this part of the Act. See, however, section 13, *post*.

(*c*) *Quære*, who are here referred to? 38 & 39 Vict. c. 55, s. 13, *ante*, p. 27, exempts from the sewers of sanitary authorities sewers made under local or private Acts of Parliament, and such as are under the authority of commissioners of sewers. These are probably referred to.

(*d*) Though this word is peremptory, it is presumed that the authority must have some discretion in the matter. They will, doubtless, be entitled to require some payment for the facility, and to impose conditions and regulations as to the communications to be made with the sewers.

Moreover, it is only a liquid which is to be received. They cannot be required to receive any solid refuse, and should steadfastly refuse to do so.

(*e*) These words, though not such as are usually to be found in a statute, appear to mean injurious to health.

It may be well to refer to the recent case of *St. Helen's Chemical Works* v. *St. Helen's Corporation*, L. R. 1 Ex. D. 196. There the refuse of chemical works, harmless in themselves, passed through drains into the common sewer, and generated therein noxious gases. The owners of the works were held liable for the nuisance thereby caused.

sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority (*f*). Appndx.

VIII. Every sanitary authority (*g*) shall, subject to the restrictions in this Act contained (*h*), have power to enforce the provisions of this Act in relation to any stream (*g*) being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority (*i*). Power of sanitary authority to enforce Act.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority, in the execution of the Public Health Act, 1875 (*k*).

Proceedings may also, subject to the restrictions in this Act contained (*l*), be instituted in respect of any offence against this Act by any person aggrieved (*m*) by the commission of such offence.

IX. The Conservancy Board constituted under the Lee Conservancy Act, 1868 (*n*), shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act. Power of Lee Conservancy Board to enforce Act.

(*f*) This refers to the order in Chancery which has been made in reference to public sewers, and to the order of the county or other court to be made under this Act.

(*g*) See the definition in section 20, and the restriction as to the authority in the next section.

(*h*) See section 13, *post*.

(*i*) There may be an obstruction or pollution out of the district which will produce mischief within the district, and there may be the same within the district which may produce mischief without the district. In both of these cases the sanitary authority of the district in which the mischief is produced, subject to the proviso in section 6, which prevents contemporaneous action by separate authorities, may take proceedings.

(*k*) See 38 & 39 Vict. c. 55, Part VI., *ante*, p. 233. As regards urban authorities these expenses will be chargeable on the general district rate; as regards rural sanitary authorities they will be chargeable as general expenses.

(*l*) See section 6, *ante*, which restricts proceedings with reference to offences under Part III. to sanitary authorities, and see the other restrictions contained in section 13. It does not appear that the consent of the Local Government Board is required to the proceedings to be taken by any person aggrieved.

(*m*) Who will be a person aggrieved? In section 6, there is a provision for a person interested. Persons living near a steam engine, and affected by the smoke, were held to be persons aggrieved within the meaning of 5 & 6 Will. 3, c. 11, s. 3 (*R.* v. *Dewsnap*, 16 East, 194); so also a person annoyed by offensive smells and vapours. *Reg.* v. *Williams*, 6 Q. B. 273.

Can these proceedings be taken in addition to those taken by the sanitary authority? It seems that they may be, because the person aggrieved may require some special provision for his benefit. At the same time such person is not prevented from resorting to the remedies which the law otherwise provides. See section 16, *post*.

(*n*) 31 & 32 Vict. c. cliv.

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The said Conservancy Board may also enforce the provisions of the Lee Conservancy Act, 1868 (*a*), under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

Legal Proceedings. Saving Clauses. Definitions.

(1). *Legal Proceedings.*

Offences to be restrained by summary order of county court.

X. The county court having jurisdiction in the place (*b*) where any offence against this Act is committed may by summary order (*c*) require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act (*d*) may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet.

Previous to granting such order the court may, if it think fit, remit to skilled parties (*e*) to report on the "best practicable and available

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(*a*) 31 & 32 Vict. c. cliv.

(*b*) It may become necessary in some cases to determine this place where there are separate jurisdictions. Thus the act of putting something in the stream may cause the obstruction in a different district, and in a different jurisdiction. All the liquid cast into the stream may be innocuous until it reaches a spot in a different jurisdiction. It seems, however, that reference must be made to the place where the act was done. See upon this point *Reg.* v. *Cotton*, 1 E. & E. 203; *Brown* v. *Bussell*; *Francombe* v. *Freeman*, L. R. 3 Q. B. 251; 9 B. & S. 1.

(*c*) Although these words point to an injunction only, it appears from the rest of the clause that the order may be something more.

(*d*) No part of the Act assigns any duty to be performed unless the provision in section 7 can be brought within the terms. But the provision of the section contemplates that the judge of the county court will not always absolutely prohibit the act complained of, but may, in some cases, make an order prescribing that the works may be carried on in such a manner as will prevent the recurrence of the evil. He may give a limited time during which the defendant may provide for the removal of his works, or adopt such means as will, according to the judgment of the court, remove the nuisance.

Very general and very discretionary powers are given to this court, as to the order, but a question will arise whether the court can make any order as to the costs of the parties who appear to make and to answer the application for this order respectively. This Act is silent on this point, and it will be necessary to refer to the general powers of the judge of the county court in respect of the orders which he is empowered to make which are rendered applicable to these proceedings by section 11, *post*.

(*e*) *i.e.*, to special referees, such as chemists, engineers, or other scientific persons. This remission is optional with the court, and as the section makes no

means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report (*f*). Appndx.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section (*g*) shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order;

And such penalty shall be enforced in the same manner as any debt adjudged to be due by the court;

Moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month (*h*) or such other period less than a month as may be prescribed by such order, the court may, in addition to any penalty it may impose, appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court (*i*).

Appeal from county court and removal of case into High Court of Justice.

XI. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits (*k*), or in respect of the admission or rejection of any

provision for the costs of this report, which will be usually for the benefit of the defendant, the court, before the matter is remitted, may probably require the defendant to undertake to pay those expenses.

(*f*) The precise meaning of these words is perhaps not altogether obvious, but it appears to be intended that the referees shall report that the expenses will be such that the defendant might reasonably be called upon to incur them, or that they would be such that it would be unreasonable that he should be required to undertake them. Indeed, the expenses might in some cases render it impossible for the manufacturer to continue his business.

It must be noticed that the word "reasonably" introduced in section 4 before "available," and in section 5 before "practicable," is omitted here, but doubtless the referees will be guided by a consideration of what is reasonable in regard to the works.

(*g*) This will occur where the judge of the county court either makes an order directing an absolute abstention from the continuance of the offence, or makes an order specifying certain works to be executed.

This part of this section sets out the means of prohibiting the offences which have been described in the former parts of the Act. The penalty is incurred when an order of the court is disobeyed.

(*h*) This means calendar month. See 13 & 14 Vict. c. 21.

(*i*) The amount will in many cases far exceed the amount imposed as the limit of the jurisdiction of the county court, nevertheless the action may be brought therein: see *Reg.* v. *Harden*, 2 E. & B. 188; *Guardians of the Hertford Union* v. *Kimpton*, 11 Ex. 295.

(*k*) These words appear to apply to the facts of the case as shown by the evidence, and probably also to the requirement made by the judge of the county court. It may be contended before the Court of Appeal that the facts proved did not justify the finding of the judge, or if he shall have made an order requiring anything to be done, that such order would not be reasonable or practicable.

Again, the complaining party may urge that their complaint has been improperly dismissed.

Appndx.

evidence, he may appeal from that decision to the High Court of Justice.

Sic for solicitors.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys (*a*), and if they cannot agree, to be settled by the judge of the county court, upon the application of the parties or their attorneys.

The Court of Appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint (*b*) entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court (*c*), if it appears to such judge desirable in the interests of justice (*d*) that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

Certificate of inspector of Local Government Board as to best practicable means.

XII. A certificate granted by an inspector of proper qualifications (*e*) appointed for the purposes of this Act, by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means, under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact (*f*).

(*a*) This alternative appears to be given because in the county court the parties may appear in person, and the provision is copied from 26 & 27 Vict. c. 74, s. 14, but it is not likely that the parties will often appear in these proceedings in person. Indeed, the sanitary authorities cannot do so.

(*b*) This word explains how the proceedings are to be taken in the county court.

(*c*) Apparently one of the parties only may make the application to the judge, though the other party must be summoned to appear at the hearing.

(*d*) These are rather indefinite words. They seem to imply that by reason of prejudice or undue interest in the court, either on the part of the judge or the jury, the case cannot be fairly tried in the county court. But it is presumed that the judge would also be moved by the gravity of the question at issue, or its difficulty.

The section does not proceed to declare what can be done by the High Court, but doubtless it will be the same as can by done by the county court.

(*e*) It is for the board to determine what are the proper qualifications. It is not open to any of the general inspectors of the department to give the certificate, but the inspector must be specially appointed for this purpose.

This certificate would be available under sections 3, 4, 5.

(*f*) It must be carefully noted that the certificate will only have this effect in proceedings under this Act, though it is to be available for some extent in other proceedings: see section 16, *post*.

Such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period (*g*). Appndx.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same (*h*).

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal (*i*) to the Local Government Board against the decision of the inspector; and the board (*k*) may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said board may appear just.

XIII. *Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act* (*l*); Restriction on proceedings for offences.

Nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months (*l*) after written notice of the intention to take such proceedings has been given to the offender (*m*);

(*g*) It does not appear that it can be revoked or recalled before the expiration of the period.

(*h*) The inspector will doubtless not give the certificate until it is paid for. It is probable that the inspector will be appointed with a fixed salary so that no charge will be made for his services, but it is competent for the board to make a different arrangement, and perhaps this will be done.

The expenses may not only be the personal charges for travelling and maintenance but charges for the cost of experiments and trials, and possibly of the examination of witnesses summoned by the inspector.

It is presumed that the expenses of any of the parties are not dealt with here, and it is doubtful whether the inspector can recover his costs if he refuse the certificate. Hence he may perhaps stipulate for a payment in advance before he undertakes the inquiry.

(*i*) This appeal should be made in writing upon foolscap folio paper addressed to the president of the board, under cover directed to the secretary of the board, and should state concisely the facts of the case and the grounds of the appeal.

If the local authority appeal the same may be made under their common seal or under the hand of their clerk.

No time is prescribed for the appeal, but it should be made promptly after the decision.

(*k*) No precise rule of action is prescribed, and the board will follow their usual practice of receiving the appeal in writing, communicating it to the other party, and having received an answer, and also communicated with the inspector, will give their decision. There is no need of an order for this decision, though there must be one for the costs if awarded. It is presumed that the costs here referred to are those of the parties. As to the recovery of such costs see section 14, *post*.

(*l*) This paragraph, being temporary in its application, was repealed by the Statute Law Revision Act, 1883.

(*m*) Care must be given to secure the proper service of this notice, as the statute does not supply any statement of what shall be sufficient service. In general the notice should be signed by the clerk of the sanitary authority proposing to proceed where such authority proceeds. In the case of a proceeding by a person aggrieved the notice will be sufficient if given by his solicitor or agent.

Appndx.

Nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending (*a*).

Orders as to costs of inquiries.

XIV. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne (*b*); and every such order and every order for the payment of costs made by the said board under section twelve of this Act may be made a rule of Her Majesty's High Court of Justice.

Power of inspectors of Local Government Board.

XV. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said board have under the Public Health Act, 1875, for the purposes of that Act (*c*).

(2). *Saving Clauses.*

Powers of Act cumulative.

XVI. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed (*d*); and nothing in this Act shall legalize any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law:

Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act (*e*).

(*a*) This prohibition is in addition to that in section 6, *ante*, which refers to proceedings under this Act, and the object of this enactment is to prevent the party from being oppressed by a variety of proceedings. But *quære* what proceedings are referred to?

(*b*) See 38 & 39 Vict. c. 55, s. 294, *ante*, p. 345. It will be observed that this part of the section is confined to the costs incurred by the Board.

(*c*) See 38 & 39 Vict. c. 55, s. 296, *ante*, p. 347. The powers are such as were given to poor law inspectors under 4 & 5 Will. 4, c. 76, s. 12, and 11 & 12 Vict. c. 109, ss. 20, 21.

(*d*) Hence persons specially aggrieved by any acts which would of themselves constitute the offences herein described may pursue the remedies which the law provides for them, as by injunction or by action or indictment. In many cases also such offences are the subject of specific provisions in local Acts. The general Act, 10 & 11 Vict. c. 17, s. 61–67, relating to waterworks, *ante*, p. 600, incorporated with the Public Health Act, 1875 (38 & 39 Vict. c. 55), also contains provisions prohibitory of some of them, and the customs of certain ancient courts and of the commissioners of sewers also apply to them. All these provisions are preserved.

Whether the pursuit of these remedies will prevent the adoption of the remedies given by this Act will depend upon the construction of the last proviso in section 13, *ante*.

(*e*) See section 12. Although this certificate is to be thus considered, the

XVII. This Act shall not apply to or effect the lawful exercise of any rights of impounding or diverting water (*f*). **Appndx.**

Saving of rights of impounding and diverting water.

XVIII. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by "The Thames Conservancy Acts, 1857 and 1864" (*g*), or by "The Thames Navigation Act, 1866," or by the Lee Conservancy Act, 1868 (*h*), or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolis Management Act, 1855 (*i*), and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

Saving of certain Conservancy Acts.

XIX. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment shall be deemed to be an offence against this Act (*k*).

Saving of works of certain local authorities.

(3). *Definitions.*

XX. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say :—

Definitions.

"Person" includes (*l*) any body of persons, whether corporate or unincorporate (*m*):

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court are not bound to give any particular weight to it. Probably without this enactment it could have been brought under the notice of the court by affidavit or otherwise. However, it cannot now be rejected as irrelevant.

(*f*) This is an important section and prevents the operation of the prohibitory clauses of the Act to the extent which the generality of the language would have effected. If the general terms of those sections were considered it might have been found that rights relating to water would be improperly and unnecessarily interfered with.

Thus, a miller or other person may throw rubbish or waste into a stream to divert the course where he has a right to such diversion, or where he desires to impound the water, having a right to do so, and if the act be done with any such object this section appears to exempt him from the provisions of the Act.

It is, however, to be carefully noticed that it is only where there is the right described that this exception takes effect, and further that no excessive deposit nor any negligent or unnecessary action in this respect will be excused.

(*g*) See 20 & 21 Vict. c. cxlvii.; 27 & 28 Vict. c. 113; 29 & 30 Vict. c. 89.

(*h*) See 31 & 32 Vict. c. cliv.

(*i*) See 18 & 19 Vict. c. 120.

(*k*) It is to be presumed that the Act referred to has made due provision for the prevention of the pollutions herein dealt with; but independently of this section this Act would not have applied to the sea, unless the Local Government Board acted under the next section, which would hardly have occurred against a statutory license.

(*l*) This word has an extending meaning and does not exclude the other significations of the term defined: *Reg* v. *Kershaw*, 6 E. & B. 1007; *Doe* v. *Benham*, 7 Q. B. 979.

(*m*) Hence partnerships and associations are included.

Appndx.

"Stream" includes (*a*) the sea to such extent, and tidal waters to such point, as may, after local inquiry, and on sanitary grounds (*b*), be determined by the Local Government Board, by order published in the *London Gazette:*

Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers (*c*), and emptying directly into the sea, or tidal waters which have not been (*d*) determined to be streams within the meaning of this Act by such order as aforesaid:

"Solid matter" shall not include particles of matter in suspension in water (*e*):

"Polluting" shall not include innocuous discoloration:

"Sanitary authority" means—

In the metropolis as defined by the Metropolis Management Act, 1855 (*f*), any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same (*g*);

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875 (*h*).

Part V.

Application of the Act to Scotland.

Modifications of Acts in Scotland.

XXI. In the application of this Act to Scotland the following provisions shall have effect:—

(1.) The expression "sanitary authority" shall mean and include the local authority in any parish or burgh in Scotland, acting under the Public Health (Scotland) Act, 1867 (*i*):

(*a*) This is not so much a definition as an enactment that the Local Government Board shall determine how much of the sea and of tidal waters shall be brought within the operation of this Act.

Tidal waters appear to signify those parts of rivers in which the tide ebbs and flows, as estuaries are covered by the term sea.

As to the rights of riparian owners in tidal rivers, see *Lyon* v. *The Fishmongers' Company*, L. R. 10 Ch. App. 979.

(*b*) By these words it is probably intended that the board are not to have any consideration of the customs, admiralty, or other regulations, except so far as they coincide with the sanitary necessities of the districts.

It will be well to refer to the provisions respecting port sanitary districts in the Public Health Act of 1875.

(*c*) See *Portobello, Magistrates of*, v. *Edinburgh, Magistrates of, ante*, p. 876.

(*d*) Or rather "which shall not be."

(*e*) It is believed that these words have a technical meaning in chemistry. However, disintegrated matters which do not sink but float in water, such as the fibres of the pulp of paper, appear to fall within this definition. But if they coagulate in the water and cease to be particles they will lose the exemption.

(*f*) See 18 & 19 Vict. c. 120.

(*g*) These are 18 & 19 Vict. c. 121, and 23 & 24 Vict. c. 77, s. 6.

(*h*) See 38 & 39 Vict. c. 55, ss. 5, 6, 9, *ante*, pp. 17—20.

(*i*) 30 & 31 Vict. c. 101.

(2.) The expression "*London Gazette*" shall mean *Edinburgh Gazette.*

(3.) The expression "the Public Health Act, 1875," shall mean the Public Health (Scotland) Act, 1867 (*k*), and any Acts amending the same :

(4.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary of State" were substituted ; and the expression "the Secretary of State" shall mean one of Her Majesty's principal Secretaries of State :

(5.) The expression "the county court" shall mean the sheriff of the county, and shall include sheriff substitute ; and the expression "plaint entered in a county court" shall mean petition or complaint presented in a sheriff court :

(6.) The expression "the High Court of Justice" shall mean the Court of Session in either division of the Inner House thereof :

(7.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs and their substitutes :

(8.) The Court of Session may, on the application of the Lord Advocate, on behalf of the Secretary of State, interpone their authority to any order made by the Secretary of State as to the costs incurred by him in relation to inquiries instituted by him under this Act, and as to the parties by whom such costs shall be borne (*l*) ; and may grant, decree, conform thereto, upon which execution and diligence may proceed in common form :

(9.) An inspector appointed for the purposes of this Act by the Secretary of State shall, for the purposes of any inquiry directed by the Secretary of State under this Act, be entitled, by a summons signed by him, to require the attendance of all persons he may think fit to call before him in regard to the matters of the inquiry, and to administer oaths to, and examine upon oath, all such persons, and to require and enforce the production upon oath of all documents, accounts, or papers in anywise relating to such inquiry ; and shall also have, in relation to the inspection of places and matters required to be inspected, similar powers to those which sanitary inspectors have under the Public Health (Scotland) Act, 1867 (*k*).

Part VI.

Application of this Act to Ireland.

XXII. In the application of this Act to Ireland the following provisions shall have effect :—

(1). The expression "sanitary authority" shall mean any urban or rural sanitary authority acting in the execution of "The Public Health (Ireland) Act 1874 (*m*) :"

(2). The expression "The Public Health Act, 1875," shall mean "The Public Health (Ireland) Act, 1874 (*m*) ;"

(*k*) 30 & 31 Vict. c. 101.
(*l*) See section 14, *ante.*
(*m*) 37 & 38 Vict. c. 93.

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(3.) The expression "the Local Government Board" shall mean the Local Government Board for Ireland :

(4.) The expression "the county court" shall mean the civil bill court :

(5.) The expression "plaint entered in a county court" shall mean civil bill process :

(6.) The expression "the High Court of Justice" shall mean any of the Superior Courts of Common Law in Dublin, or any judge thereof to whom appeals may be brought from the decision of a civil bill court :

(7.) The expression "the judge of the county court" shall mean the chairman of quarter sessions and judge of the civil bill court :

(8.) The expression the "*London Gazette*" shall mean the *Dublin Gazette:*

(9.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred upon the civil bill courts and superior courts, and the judges of the same respectively :

(10.) All penalties, when recovered by or on behalf, or at the instance of or in any proceeding instituted by any sanitary authority, or any officer of such authority, shall be paid to such sanitary authority, and by the same applied in aid of their expenses under the Sanitary Acts; and save as aforesaid all such penalties shall be applied in manner directed by "The Fines Act (Ireland), 1851" (*a*), and any Act amending the same.

THE PUBLIC LIBRARIES ACTS AMENDMENT ACT, 1877.

(40 & 41 Vict. Cap. 54) (*b*).

An Act to amend the Public Libraries Acts. [14th August, 1877.]

Whereas by the Public Libraries Acts, 18 & 19 Vict. c. 40, for Ireland; 29 & 30 Vict. c. 114, for England (*c*); and 30 & 31 Vict. c. 37, for Scotland, the mode by which the Act is to be adopted is prescribed to be by public meeting, and it has been found that in many cases a public meeting is a most incorrect and unsatisfactory mode, and fails to indicate the general opinion of the ratepayers, and it is desirable to ascertain these opinions more correctly :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Ratepayers opinions may be ascertained by voting papers.

I. It shall be competent for the prescribed local authority in any place or community which has the power to adopt one of the above

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(*a*) 14 & 15 Vict. cc. 90, 93.

(*b*) See 18 & 19 Vict. c. 70, *ante*, p. 665 ; 29 & 30 Vict. c. 114, *ante*, p. 695; 34 & 35 Vict. c. 71, *ante*, p. 768; and 46 & 47 Vict. c. 37, *post*.

(*c*) This is a mistake. The provision referred to is contained in 18 & 19 Vict. c. 70, *ante*.

recited Acts, to ascertain the opinions of the majority of the ratepayers either by the prescribed public meeting or by the issue of a voting paper to each ratepayer, and the subsequent collection and scrutiny thereof, and any expense in connexion with such voting papers shall be borne in the same way as the expense of a public meeting would be borne, and the decision of the majority so ascertained shall be equally binding (*d*).

Ratepayers may stipulate for modified assessment.

II. In addition to the simple vote "Yes" or "No" to the adoption of the Act, such voting paper may stipulate that its adoption shall be subject to a limitation to some lower rate of assessment than the maximum allowed by Act of Parliament in force at the time, and such lower limit, if once adopted, shall not be subsequently altered except by public vote similarly taken.

Definition.

III. "Ratepayer" shall mean every inhabitant who would have to pay the free library assessment in event of the Act being adopted.

Short title.

IV. This Act may be cited as the Public Libraries Amendment Act, 1877.

THE CANAL BOATS ACT, 1877.

(40 & 41 Vict. Cap. 60) (*e*).

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings. [14th August, 1877.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Registration of use of canal boat as dwelling.

I. After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force, then after the expiration of six months from the date at which they have come into force, a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned (*f*) as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

(*d*) The provisions of this Act do not take away the common law right to a poll when a public meeting has been held and a poll demanded. *Reg.* v. *Wimbledon Local Board*, *ante*, p. 666.

(*e*) See the amending Act, 47 & 48 Vict. c. 75, *post*.

(*f*) See section 7, *post*. It will be observed that the owner has the choice of several authorities with whom to register. For the definition of *owner*, see section 14, *post*.

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If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used.

Local Government Board to make regulations for registration, fixing number of persons, promoting cleanliness, and preventing infectious disease.

II. The Local Government Board shall make regulations, and may from time to time revoke and vary such regulations (*a*) –

(1.) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration ; and

(2.) For the lettering, marking, and numbering of such boats ; and

(3.) For fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat ; and

(4.) For promoting cleanliness in and providing for the habitable condition of canal boats ; and

(5.) For preventing the spread of infectious disease by canal boats (*b*).

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

Certificate of registry and lettering and numbering of boat.

III. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number, age, and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, as may seem fit to the registration authority, and the master shall have the care of one of such certificates (*c*).

Every canal boat when registered shall be lettered, marked, and numbered in some conspicuous manner (as directed by the regulations made under this Act), and such lettering, marking, and numbering shall include the word "registered," and the name of the place to which the boat is registered as belonging, and the registered number (*d*).

Any boat not lettered, marked, and numbered in conformity with this section, or having the letter, mark, or number altered, defaced, or obliterated, shall be deemed, for the purposes of this Act, to be an unregistered canal boat (*e*).

Power of sanitary authority for prevention of infectious disease in canal boats.

IV. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the

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(*a*) Regulations have been made under this section, and will be found in *Glen's Local Government Orders*, p. 436. As to default in compliance with these regulations, see 47 & 48 Vict. c. 75, s. 2, *post*.

(*b*) See section 4, *post*.

(*c*) This certificate is made void by structural alterations in the boat. 47 & 48 Vict. c. 75, s. 1, *post*.

(*d*) The name of the school district referred to in section 7, *post*, need not be painted on the boat.

(*e*) The boat must be lettered on both sides or on the stern, so as to be visible from both sides of the canal. 47 & 48 Vict. c. 75, s. 7, *post*.

certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875 (*f*), and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

38 & 39 Vict c. 55

Authorized person may enter boat, &c.

V. Where any person duly authorized by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorization, purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorized as aforesaid, enter by day (*g*) such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act, or a person suffering from an infectious disorder, and may, if need be, detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

Education of children dwelling on board canal boats.

33 & 34 Vict. c. 75.

36 & 37 Vict c. 86.

39 & 40 Vict. c. 79.

VI. A child in a canal boat registered in pursuance of this Act, and his parent, shall for the purposes of the Elementary Education Acts, 1870, 1873, and 1876, be deemed, subject as hereinafter mentioned, to be resident in the place to which the boat is registered as belonging (*h*), and shall be subject accordingly to any bye-law in force under the said Acts in that place.

Provided that if the parent satisfies the school board or school attendance committee having authority in that place, that the child is actually attending school, or is under efficient instruction in accordance with the said Acts, in some other school district, the said board or committee shall grant him without charge a certificate to that effect, and thereupon he and his child shall be deemed for the purposes aforesaid to be resident in the school district in which the child is so attending school, or under efficient instruction, and shall be subject to any bye-law in force therein.

The said certificate may on application by the parent be rescinded or varied by the school board or school attendance committee for the place to which the boat is registered as belonging, and may be rescinded with-

(*f*) See the Public Health Act, 1875, section 124, *ante*, p. 124.
(*g*) *i.e.*, between 6 a.m. and 9 p.m. 47 & 48 Vict. c. 75, s. 9, *post*.
(*h*) See the next section.

Appndx.

out application by any such board or committee, if they are satisfied, after due notice to the parent, that his child is not properly attending school or under efficient instruction in the school district mentioned in the certificate.

Registration authority.

VII. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration authority having a district abutting on the canal on which such boat is accustomed or intended to ply (*a*).

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

33 & 34 Vict. c. 75.
36 & 37 Vict. c. 86.
39 & 40 Vict. c. 79.

Expenses of sanitary authority.

VIII. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows:

(1.) When they are incurred by an urban sanitary authority, a rural sanitary authority, or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875 (*b*) are defrayed; provided that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses (*c*); and

38 & 39 Vict. c. 55.

(2.) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same.

18 & 19 Vict. c. 120.

Regulations to be laid before Parliament.

IX. An order of the Local Government Board making, revoking, or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that board (*d*).

Illegal detention of certificate of registry.

X. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two jus-

(*a*) This gives the owner the choice of the place of registration.

(*b*) That is, out of the general district fund, *ante*.

(*c*) See *ante*, p. 233. As to the duty of the local authority to enforce the Act and regulations under it, see 47 & 48 Vict. c. 75, s. 3, *post*.

(*d*) See the orders of the Local Government Board prescribing places and fixing prices for sale of regulations, *Glen's Local Government Orders*, pp. 473 and 478.

tices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate. **Appndx.**

Application of fees under this Act.

XI. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable (*e*).

Power of canal company &c., to establish schools.

XII. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners, lessees, or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged, maintained, and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous.

A "special resolution" shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862. 25 & 26 Vict. c. 89.

Recovery of penalties.

XIII. Offences under this Act may be prosecuted, and fines under this Act may be recovered on summary conviction before two justices having jurisdiction, either in the place to which the boat in respect of which the offence was committed is registered as belonging, or in the place where the offence is committed, or in the place where the alleged offender for the time being is, in manner provided by the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and the Acts amending the same (*f*).

Definitions.

XIV. In this Act, unless the context otherwise requires—

The expression "sanitary authority" means an urban sanitary authority, a rural sanitary authority, or a port sanitary authority; provided that in the case of the parishes mentioned in Schedule A. and the districts mentioned in Schedule B. to the Metropolis Management Act, 1855, so far as they are not within the jurisdiction of a port sanitary authority, the vestry of any such parish and the district board of any such district elected under the Metropolis Management Act, 1855, and the Acts amending the same, shall be deemed to be sanitary authorities, and where other sanitary authorities are by this Act empowered to exercise powers conferred by the Public Health Act, 1875, may exercise similar powers conferred by any Act of Parliament extending to such parishes or district: 18 & 19 Vict. c. 120.

The expression "parent" includes guardian, and every person who is liable to maintain or has the actual custody of any child:

(*e*) See section 8, *ante*.

(*f*) Fines are to be paid to the registration or sanitary authority. 47 & 48 Vict. c. 75, s. 8, *post*.

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38 & 39 Vict. c. 55.

The expressions "urban sanitary authority" and "rural sanitary authority" and "port sanitary authority" have the same meaning as in the Public Health Act, 1875 (*a*):

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not within the ebb and flow of the tide:

17 & 18 Vict. c. 104.

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same (*b*):

The expression "owner" includes a person who, though only the hirer of a canal boat, appoints the master and other persons working such boat:

The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat.

Commencement of Act.

XV. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-eight, which day is in this Act referred to as the commencement of this Act.

Extent of Act.

XVI. This Act shall not extend to Scotland or Ireland.

Short title.

XVII. This Act may be cited as the Canal Boats Act, 1877.

THE LOCAL TAXATION RETURNS ACT, 1877.

(40 & 41 Vict. Cap. 66) (*c*).

An Act to amend the Law with respect to the Annual Returns of Local Taxation in England, and for other purposes relating to such Taxation.

[14th August, 1877.]

23 & 24 Vict. c. 51.

Whereas by the Local Taxation Returns Act, 1860, and other Acts, local authorities or their officers are required to make annually to one of Her Majesty's principal Secretaries of State, or to the Local Government Board, returns of their receipts and expenditure, and of any rates, taxes, tolls or dues, levied by them, and it is expedient to make further provision respecting such returns:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

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(*a*) *Ante*, pp. 17—21.

(*b*) The excepted vessels may in some cases be registered as canal boats. 47 & 48 Vict. c. 75, s. 10, *post*.

(*c*) See 23 & 24 Vict. c. 51, *ante*, p. 677. This Act is repealed by the Municipal Corporation Act, 1882, in so far as it relates to the receipts and expenditure of municipal corporations. As to returns under that Act see 45 & 46 Vict. c. 50, s. 28.

Commons, in this present Parliament assembled, and by the authority of the same, as follows : **Appndx.**

I. The annual return required by law to be made of any receipts or expenditure of a local authority, or of any rates, taxes, tolls, or dues, shall be made for the financial year ending on the twenty-fifth day of March, or on such other day as the Local Government Board may from time to time prescribe, upon the application of any particular authority in respect of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them, or in respect of the receipts and expenditure and of the rates, taxes, tolls, or dues levied by any class of authorities (*d*). Date for annual return of local taxation.

Every such return shall be sent to the Local Government Board and not to one of her Majesty's principal Secretaries of State, and shall be so sent within one month after the audit of the receipts and expenditure to which the return relates is completed, or if the audit is not completed within six months after the end of the financial year for which the return is to be made, then on the expiration of such six months, or if there is no audit, then within one month after the end of the said financial year.

For the purpose of any such return the date to which the accounts of any local authority are required by law to be made up, and the date at which such accounts are required by law to be audited, and auditors are required to be elected or appointed, may be altered by the local authority, with the approval of the Local Government Board : Provided that nothing in this section shall prevent any accounts being made up and audited at shorter periods than twelve months, so that one of such shorter periods ends on the last day of the financial year for which the return of such accounts is to be made.

II. Every return to which this Act applies shall be made by the clerk of the local authority, or where no clerk is appointed or acting, by the treasurer or other officer keeping the accounts of the receipts and expenditure, rates, taxes, tolls, or dues, to which the return relates, and any such clerk, treasurer, or other officer who makes default in making any such return shall be liable to a penalty not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice (*e*). Obligation of clerk of local authority to send return.

III. The expression "local authority" in this Act means any justices, municipal or other corporation, board, guardians, sanitary authority, vestry, commissioners, inspectors, trustees, or other body of persons required by law to make to one of Her Majesty's principal Secretaries of State, or to the Local Government Board, a return of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them or under their direction. Definition of "local authority."

IV. (*f*). The Local Government Board shall make such provision as may seem to them necessary for any change of the date of the accounts First return under Act.

(*d*) This return is dispensed with where the accounts are audited by a district auditor, and a duplicate of the financial statement is sent to the Local Government Board under 42 Vict. c. 6, s. 3.

(*e*) See 23 & 24 Vict. c. 51, s. 4, *ante*, p. 678.

(*f*) The provision of this section as to the first return was repealed by the Statute Law Revision Act, 1883.

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and audit of the accounts of any local authority which may be rendered necessary by the provisions of this Act, so as to cause as little inconvenience as possible to the local authority.

Short title.

V. This Act may be cited as the Local Taxation Returns Act, 1877.

The Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter fifty-one, intituled "An Act to provide for an annual return of rates, taxes, tolls, and dues levied for local purposes in England," may be cited as the Local Taxation Returns Act, 1860, and that Act and this Act may be cited as the Local Taxation Returns Acts, 1860 and 1877.

THE BATHS AND WASHHOUSES ACT, 1878.

(41 Vict. Cap. 14) (*a*).

An Act to amend the Law relating to Public Baths and Washhouses.

[27th May, 1878.]

Whereas the Act passed in the session held in the ninth and tenth years of the reign of Her present Majesty, chapter seventy-four, intituled "An Act to encourage the establishment of Public Baths and Washhouses," was amended by the Act passed in the session held in the tenth and eleventh years of the reign of Her present Majesty, chapter sixty-one, intituled "An Act to amend the Act for the establishment of Public Baths and Washhouses," and it is expedient further to amend the said first-recited Act, and to provide for the establishment of covered swimming baths and other purposes:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited for all purposes as the Baths and Washhouses Act, 1878.

"Covered swimming bath."

The words "covered swimming bath" in this Act shall mean a swimming bath protected by a roof or other covering from the weather.

Construction of Act. 38 & 39 Vict. c. 66. 38 & 39 Vict. c. 55.

II. This Act and the recited Acts, as amended by the Statute Law Revision Act, 1875, and the Public Health Act, 1875, and by this Act, shall be construed and carried into execution as one Act; and the words "the council and the commissioners" when used in this Act shall include the urban sanitary authority mentioned in the tenth section of the Public Health Act, 1875.

(*a*) See 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61, *ante*, also 45 & 46 Vict. c. 30, *post*.

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III. All the provisions of the recited Acts respectively shall be construed to extend and to have extended from the passing of such Acts respectively to covered swimming baths as well as to baths, washhouses, and open bathing places. Covered swimming baths authorized.

IV. The council and the commissioners respectively may from time to time provide covered swimming baths, and make such reasonable charges for the use thereof as they shall think fit, not exceeding the charges mentioned in the schedule annexed to this Act. As to charges for swimming baths.

V. The council and the commissioners respectively may during such period, not exceeding five months in any one year, as they shall think fit, from the beginning of the month of November to the end of the month of March, close any covered swimming bath or open swimming bath, and may either keep the same closed or may establish therein a gymnasium or such other means of healthful recreation as they shall think fit, or may during such period allow any covered or open swimming bath to be used as an empty building for such purposes of healthful recreation or exercise as they shall think fit during such period as aforesaid, and may at any time allow any portion of the public baths not required by the commissioners to be used for holding vestry meetings or other parochial purposes: Provided always, that no covered or open swimming bath when closed may be used for music or dancing. Power to close swimming baths for a limited period.

VI. The council and the commissioners respectively may make bye-laws for the regulation, management, and use of the open or swimming baths when used for any of the purposes mentioned in the fifth section of this Act; and all the provisions in the principal Act relating to bye-laws shall extend and apply to bye-laws made under this section (*b*). Power to make bye-laws.

VII. The council and the commissioners respectively may appoint and remove at pleasure such officers and servants as shall be necessary for the management and superintendence of any gymnasium or other means of recreation established under this Act, and may appoint reasonable salaries, wages, and allowances for such officers and servants. Power to appoint officers.

VIII. The council and the commissioners respectively may from time to time make such reasonable charges for the use of the gymnasium or other means of recreation established under this Act, or for the use of any covered swimming bath as an empty room, as they shall think fit. Power to make charges for gymnasium, &c.

IX. The provisions in the twenty-first, twenty-second, and twenty-third sections of the principal Act (*c*) authorizing the borrowing and advancement of money for the purposes of that Act shall be taken to authorize the borrowing and advancement of money in like manner for the purposes of this Act; and the approval of the Local Government Board shall be substituted for that of the Commissioners of Her Majesty's Treasury in all cases where money is borrowed for the purposes of the principal Act or this Act. Powers of borrowing, &c., extended to this Act.

(*b*) Model bye-laws have been issued by the Local Government Board under this section.

(*c*) See these sections, *ante*, p. 559.

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Power to remove offenders. Baths, &c., to be considered public and open places.

X. The council and the commissioners respectively, and their respective servants and agents, may remove any person offending against any of the bye-laws made under this Act and the recited Acts, or any of them; and any bath or washhouse, or open bathing place, or covered swimming bath, established under this Act and the recited Acts, or any of them, shall be taken to be a public and open place, so as to make offences against decency therein criminal offences.

Power to refuse admittance to baths, &c., to offenders.

XI. The council and the commissioners respectively, and their respective officers and servants, may refuse admittance to any bath, washhouse, open bathing place or covered swimming bath, or any of them, to any person (1) who shall have been convicted of wilfully disobeying any of the bye-laws in such bath, washhouse, open bathing place, or covered swimming bath; (2) who shall have been convicted of any offence against public decency in any of such baths, washhouses, open bathing places or covered swimming baths as aforesaid.

Power to make superannuation allowances to officers, &c., employed about baths, &c., within the metropolis.

XII. The provisions of an Act passed in the session held in the twenty-ninth year of the reign of Her present Majesty, chapter thirty-one, intituled "An Act to provide for superannuation allowances to officers of vestries and other boards within the area of the Metropolis Local Management Act," shall extend to and include officers and servants employed in and about any baths, washhouses, open bathing places, or covered swimming baths established under this Act and the recited Acts, or any of them, by the council or the commissioners within the area of the Metropolis Local Management Act.

Expenses of Act and income arising to be applied as under principal Act.

XIII. The expense of carrying this Act into execution shall be defrayed, and the income arising from the use in any manner of any covered swimming bath established under the provisions of this Act and the recited Acts, or any of them, shall be applied, in the same manner as that in which the expenses of the principal Act are thereby directed to be defrayed, and the income arising from baths and washhouses, and open bathing places, is thereby directed to be applied.

Increase of charge.

XIV. The charge of one halfpenny, fixed by the tenth and eleventh Victoria, chapter sixty-one, section seven (*a*), and part five of the schedule to that Act, shall be increased to one penny.

The SCHEDULE above referred to.

Charges for covered Swimming Baths.

1st Class.—Any sum not exceeding eightpence for each person.
2nd Class.—Any sum not exceeding fourpence for each person.
3rd Class.—Any sum not exceeding twopence for each person.

(*a*) *Ante*, p. 616.

THE FACTORY AND WORKSHOP ACT, 1878.

(41 Vict. Cap. 16) (*b*).

An Act to consolidate and amend the Law relating to Factories and Workshops. [27th May, 1878.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: **Appndx.**

Preliminary.

I. This Act may be cited as the Factory and Workshop Act, 1878. Short title.

II. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act (*c*) . . . Commencement of Act.

Part I.

General Law relating to Factories and Workshops.

(1.) *Sanitary Provisions* (*d*).

III. A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance. Sanitary condition of factory and workshop.

A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other

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(*b*) Only those sections of the Act which bear upon the duties of sanitary authorities are here included.

(*c*) The rest of this section is repealed by the Statute Law Revision Act, 1883.

(*d*) See the provisions of the Public Health Act, 1875, s. 91, *ante*, p. 92, as to factories not kept in a cleanly state or overcrowded. The provisions of this section are to be enforced as to bakehouses by the local authority. See 46 & 47 Vict. c. 53, s. 17, *post*.

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impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Notice by inspector to sanitary authority of sanitary defects in factory or workshop.

IV. Where it appears to an inspector under this Act that any act, neglect, or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop is punishable or remediable under the law relating to public health (*a*), *but not under this Act*, that inspector shall give notice in writing of such act, neglect, or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law.

An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority (*b*).

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Part II.

Special Provisions relating to Particular Classes of Factories and Workshops.

(1.) *Special Provisions for Health in certain Factories and Workshops.*

Limewashing and washing of the interior of factories and workshops.

XXXIII (*c*). For the purpose of securing the observance of the requirements of this Act as to cleanliness in every factory and workshop, all the inside walls of the rooms of a factory or workshop, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory or workshop, if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished, shall be washed with hot water and soap once at least within every fourteen months, to date from the period when last washed.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Where it appears to a Secretary of State that in any class of factories

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(*a*) That is, under the Public Health Act, 1875.

(*b*) As to these officers, see *ante*, p. 218.

(*c*) The provisions of this and the next two sections are to be enforced as to bakehouses by the sanitary authority. See 46 & 47 Vict. c. 53, *post*.

or workshops, or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories or workshops, or parts thereof, a special exception that the regulations in this section shall not apply thereto.

Limewashing, painting, and washing of the interior of bakehouses.

XXXIV. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed the limewashing shall be renewed once at least in every six months.

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act.

Provision as to sleeping places near bakehouses.

XXXV. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place, unless it is constructed as follows; that is to say,

unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence five pounds.

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(4.) *Special Exception for Domestic and certain other Factories and Workshops.*

Exception of domestic factories and workshops and certain other workshops from certain provisions of the Act.

LXI. The provisions of this Act which relate—

(1.) To the cleanliness (including limewashing, painting, varnishing, and washing), or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop; or

(2.) To all children, young persons, and women employed in a factory or workshop having the times allowed for meals at the same hour of the day, or during any part of the times

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allowed for meals in a factory or workshop being employed in the factory or workshop or being allowed to remain in any room; or

(3.) To the affixing of any notice or abstract in a factory or workshop; or specifying any matter in the notice so affixed; or

(4.) To the allowance of any holidays to a child, young person, or woman; or

(5.) To the sending notice of accidents;

shall not apply—

(*a.*) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there; or

(*b.*) To a workshop which is conducted on the system of not employing children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.

And the provisions of this Act with respect to certificates of fitness for employment shall apply to any such private house, room, or place as aforesaid, which by reason of the nature of the work carried on there is a factory, as if the same were a workshop within the meaning of this Act, and not a factory.

Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed for all purposes of this Act to be conducted on the said system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the said system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing), or to freedom from effluvia.

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(5.) *Supplemental as to Special Provisions.*

Requirement of sanitary provisions as condition of special exceptions.

LXIII. Where it appears to a Secretary of State that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this part of this Act direct that the adoption of such means or provision shall be a condition of such employment; and if it appears to a Secretary of State that the adoption of any such means or provision is no longer

required, or is, having regard to all the circumstances, inexpedient, he may, by order made under this part of this Act, rescind the order directing such adoption without prejudice to the subsequent making of another order.

Power to rescind order granting or extending exception.

LXIV. Where an exception has been granted or extended under this part of this Act by an order of a Secretary of State, and it appears to a Secretary of State that such exception is injurious to the health of the children, young persons, or women employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the said exception was so granted or extended, he may by an order made under this part of this Act rescind the grant or extension, without prejudice to the subsequent making of another order.

Provisions as to order of Secretary of State.

LXV. Where a Secretary of State has power to make an order under this part of this Act, the following provisions shall apply to that order:

(1.) The order shall be under the hand of the Secretary of State and shall be published in the *London Gazette*, and shall come into operation at the date of such publication in the *London Gazette*, or at any later date mentioned in the order:

(2.) The order may be temporary or permanent, conditional or unconditional, and whether extending a prohibition or exception, granting an exception, directing the adoption of any means or provisions, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly:

(3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the same has been so laid before such House, resolve that such order ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such order or to the making of any new order:

(4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the extension or grant or otherwise for making the order.

Provisions as to occupier availing himself of special exceptions, and registry of work under them.

LXVI. An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception under this part of this Act, shall serve on an inspector, and (except in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply) affix in his factory or workshop notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

Before the service of such notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of such notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that such special exception does not apply to his factory or workshop, unless he has previously served on an inspector notice that he no longer intends to avail himself of such special exception.

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The notice so served and affixed shall specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every child, young person, and woman where they differ from the ordinary hours or times.

An occupier of a factory or workshop shall enter in the prescribed register, and report to an inspector, the prescribed particulars respecting the employment of a child, young person, or woman in pursuance of an exception, but such entry and report need not be made in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply, except so far as may be from time to time prescribed by a Secretary of State.

Where the occupier of a factory or workshop avails himself of an exception under this part of this Act, and a condition for availing himself of such exception (whether specified in this part of this Act, or in an order of a Secretary of State made under this part of this Act) is not observed in that factory or workshop, then

(1.) If such condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and

(2.) In any other case a child, young person, or woman employed in the factory or workshop, in alleged pursuance of the said exception, shall be deemed to be employed contrary to the provisions of this Act.

Part III.

Administration, Penalties, and Legal Proceedings.

(4.) *Fines.*

Fine for not keeping factory or workshop in conformity with Act.

LXXXI. If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act; the court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

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Fine for employing children, young persons, and women contrary to the Act.

LXXXIII. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed.

A child, young person, or woman who is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act.

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Forgery of certificates, false entries and declarations.

LXXXV. Every person who forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided), or who gives or signs any such certificate knowing the same to be false in any material particular, or who knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid, or who knowingly utters or makes use of as applying to any person a certificate which does not so apply, or who personates any person named in a certificate, or who wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

Every person who wilfully makes a false entry in any register, notice, certificate, or document required by this Act to be kept or served, or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

Fine on person committing offence for which occupier is liable.

LXXXVI. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine, has in fact been committed by some agent, servant, workman, or other person, such agent, servant, workman, or other person shall be liable to the same fine as if he were the occupier.

Power of occupier to exempt himself from fine on conviction of the actual offender.

LXXXVII. Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

When it is made to appear to the satisfaction of an inspector at the time of discovering the offence, that the occupier of the factory or workshop had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders, then the inspector shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier of the factory or workshop.

Appndx.

Restraint on cumulative fines.

LXXXVIII. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

(*a.*) Where the repetition of the offence occurs after an information has been laid for the previous offence; or

(*b.*) Where the offence is one of employing two or more children, young persons, or women contrary to the provisions of this Act.

(5.) *Legal Proceedings.*

Prosecution of offences and recovery and application of fines.

LXXXIX. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdictions Acts.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.

Appeal to quarter sessions.

XC. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom; subject, in England, to the conditions and regulations following:

(1.) The appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county or place in which the decision of the court was given, holden not less than twenty-one days after the day on which such decision was given; and

(2.) The appellant shall, within ten days after the day on which the decision of the court was given, serve notice on the other party and on the clerk of the court of summary jurisdiction of his intention to appeal, and of the general grounds of such appeal; and

(3.) The appellant shall, within three days after such notice is served, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or the

appellant may, if the court of summary jurisdiction thinks it expedient, instead of entering into a recognizance give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as the court deem sufficient; and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if they think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just; and

(6.) The court of appeal may also make such order as to costs to be paid by either party as the court thinks just; and

(7.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that the same has been quashed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed, in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(8.) Every notice in writing required by this section to be given by an appellant may be signed by him or by his agent on his behalf, and may be transmitted in a registered letter by the post, in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of post.

Limitation of time and general provisions as to summary proceedings.

XCI. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:

(1.) The information shall be laid within two months, or, where the offence is punishable at discretion by imprisonment, or is a breach of the provisions of this Act with respect to holidays, within three months after the commission of the offence:

(2.) The description of an offence in the words of this Act, or in similar words, shall be sufficient in law:

(3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant:

(4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more:

(5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by which the occupier employing persons in the factory or workshop is usually known:

Appndx.

(6.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorized by this Act to appeal shall not be removed by *certiorari* or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

Evidence in summary proceedings.

XCII. If a person is found in a factory, except at meal times, or while all the machinery of the factory is stopped, or for the sole purpose of bringing food to the persons employed in the factory between the hours of four and five o'clock in the afternoon, such person shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory:

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory within the meaning of this enactment; and this enactment shall not apply to a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply.

Where a child or young person is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the child or young person is not of that age.

A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of such conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, upon the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

Part IV.

General Definitions, &c.

General definitions.

XCVI. In this Act, unless the context otherwise requires,—

"Child." The expression "child" means a person under the age of fourteen years:

"Young person." The expression "young person" means a person of the age of fourteen years and under the age of eighteen years:

"Woman." The expression "woman" means a woman of eighteen years of age and upwards:

"Parent." The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages, of a child or young person:

"Treasury." The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

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The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State : "Secretary of State."

The expression "education department" means the Lords of the Committee of the Privy Council on Education : "Education department."

The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and any commissions, board, or vestry in the metropolis having the like powers as such urban sanitary authority : "Sanitary authority." 38 & 39 Vict. c. 55.

The expression "person" includes a body of persons corporate or unincorporate : "Person."

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night : "Week."

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning : "Night."

The expression "prescribed" means prescribed for the time being by a Secretary of State : "Prescribed."

The expression "Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and any Acts amending the same : "Summary Jurisdiction Acts."

The expression "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to : "Court of summary jurisdiction."

The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process. "Mill-gearing."

The factories and workshops named in the Fourth Schedule to this Act are in this Act referred to by the names therein assigned to them.

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CI. The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of this Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace. Application to factories and workshops of 38 & 39 Vict. c. 55.

It is hereby declared that the Public Health Act, 1875, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as it applies to buildings where more than twenty are employed.

CII. Any enactment or document referring to the Acts repealed by this Act, or any of them, or to any enactment thereof, shall be construed to refer to this Act and to the corresponding enactment thereof. Construction of enactments, &c., referring to repealed Acts.

(3.) *Application of Act to Scotland and Ireland.*

* * * * *

(4.) *Repeal.*

Appndx. CVII. The Acts specified in the Sixth Schedule to this Act are hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned :

Repeal of Acts.

Provided that (*a*)—

THE PUBLIC WORKS LOANS ACT, 1878.

(41 Vict. Cap. 18) (*b*).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and by the Commissioners of Public Works in Ireland, and to authorize the former Commissioners to compound and cancel certain Loans and Interest, and to amend the Public Works Loans Act, 1875. [27th May, 1878.]

38 & 39 Vict. c. 89. Whereas by the Public Works Loans Act, 1875, and other Acts, the Public Works Loan Commissioners are authorized to make loans for the purposes therein mentioned, and it is expedient to grant the money hereinafter mentioned for the purpose of such loans :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. I. This Act may be cited as the Public Works Loans Act, 1878.

Part I.

Public Works Loan Commissioners.

II. (*c*).

III. (*d*).

Amendment of 38 & 39 Vict. c. 89, s. 36, as to exami- IV. Whereas by section thirty-six (*e*) of the Public Works Loans Act, 1875, the Local Government Board are required to satisfy themselves that any loan advanced by the Public Works Loan Commissioners on

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(*a*) This proviso is repealed by the Statute Law Revision Act, 1883. It has not been thought necessary to print the schedule, as the several enactments repealed by it are noticed in the body of this work in so far as they are material.

(*b*) See 38 & 39 Vict. c. 89, *ante*, p. 828.

(*c*) This section was repealed by the Statute Law Revision Act, 1883.

(*d*) This section relates to the composition of debt due from the Epping Rural Sanitary Authority.

(*e*) *Ante*, p. 841.

the security of a rate is applied to the purpose for which it is advanced, and are authorized to appoint any officer to conduct on their behalf such examination as they may think necessary with a view to ascertaining that the loan has been so applied, and it is expedient to make further provisions with respect to the powers of the Local Government Board for the purposes of the said section: Be it therefore enacted as follows:

Examination into proper application of loan advanced on rates.

Where upon any examination made in pursuance of section thirty-six of the Public Works Loans Acts, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct a sum equal to the amount so misapplied to be raised within the time and out of the fund or rate named in the order and to be applied as directed by the above-mentioned order (*f*).

38 & 39 Vict. c. 89.

An order made by the Local Government Board in pursuance of this section may be enforced by writ of *mandamus*.

V. (*g*).

VI. So much of any Act as requires the Public Works Loan Commissioners to take in respect of any loan advanced by them under that Act in preference to any other securities, all or such one or more of the securities issuable under the Local Loans Act, 1875, as they may prefer, is hereby repealed, and the security for any such loan may be given and taken under and pursuant to the Public Works Loans Act, 1875.

Repeal of obligation of the Public Works Loan Commissioners to take securities under 38 & 39 Vict. c. 83.

* * * * * (*h*)

38 & 39 Vict. c. 89.

(*f*) The unapplied balance may now be applied to any purpose to which moneys borrowed on the security of the rate are properly applicable: 44 & 45 Vict. c. 38, s. 9.

(*g*) Section 5 was repealed by the Statute Law Revision Act, 1875.

(*h*) Part II. related to Ireland only, and was repealed by the Statute Law Revision Act, 1883.

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

(41 & 42 Vict. Cap. 78) (*a*).

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes.

[16th August, 1878.]

Appndx.

24 & 25 Vict. c. 70. 28 & 29 Vict. c. 83.

Whereas it is expedient to amend the law relating to highways in England, and to amend the Locomotives Acts, 1861 and 1865;

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

I. This Act may be cited as the Highways and Locomotives (Amendment) Act, 1878.

Application of Act.

II. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply to the Isle of Wight (*b*); nor to any part of the metropolis; nor to any part of a county to which the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better Management and Control of the Highways in South Wales," extends.

Part I.

Amendment of Highway Law.

Highway Districts.

Highway districts to be made so far as possible coincident with rural sanitary districts.

III. In forming any highway districts, or in altering the boundaries of any highway districts, the county authority (*c*) shall have regard to the boundaries of the rural sanitary districts (*d*) in their county, and

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(*a*) The several statutes relating to highways are not included in this work. This Act, however, confers upon rural sanitary authorities power to beco the highway authorities for their districts, and is therefore included.

(*b*) See sections 13 and 27, *post*.

(*c*) That is, the justices in quarter sessions. See section 38, *post*.

(*d*) See section 38, *post*.

shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts. Appndx.

Power for rural sanitary authority of district co-incident with highway district to become highway board.

IV. Where a highway district, whether formed before or after the passing of this Act, is or becomes coincident in area with a rural sanitary district, the rural sanitary authority of such district may apply to the county authority, stating that they are desirous to exercise the powers of a highway board under the Highway Acts within their district.

On such application the county authority may, if they see fit, by order declare that from and after a day to be named in the order (in this Act called the commencement of the order) such rural sanitary authority shall exercise all the powers of a highway board under the Highway Acts; and as from the commencement of the order the existing highway board (if any) for the district shall be dissolved, and waywardens or surveyors shall not hold office or be elected for any parish in the district (*e*).

An order made under this section may be amended, altered, or rescinded by a subsequent order of the county authority.

Where a highway district, being coincident in area with a rural sanitary district, is situate in more than one county, an order under this section may be made by the county authority of any county in which any part of such district is situate, but such order, and any order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the county authority or authorities of the other county or counties in which any part of such district is situate.

Consequences of rural sanitary authority becoming highway board.

V. (1.) From and after the commencement of the order declaring a rural sanitary authority entitled to exercise the powers of a highway board within their district, the following consequences shall ensue:

All such property, real or personal, including all interests easements and rights in to and out of property real and personal and including things in action, as belongs to or is vested in or would but for such order have belonged to or been vested in the highway board, or any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the rural sanitary authority for all the estate and interest of the highway board, or of such surveyor or surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the rural sanitary authority may be enforced against that authority to the extent of the property transferred:

All such powers rights duties liabilities capacities and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the Highway Acts, or the power of making, assessing, and levying highway rates) as are vested in or attached to or would but for such order have become vested in or attached to the highway board, or any surveyor or

(*e*) Notwithstanding this dissolution the highway board will continue to exist for certain purposes, such as those of suing or being sued and of acting generally for the purpose of winding up its affairs. *Reg.* v. *Justices of Essex*, 11 Q. B. D. 704; 52 L. J. M. C. 124; 49 L. T. (N.S.) 177; 32 W. R. 220; 47 J. P. 725.

Appndx.

surveyors of any parish forming part of the district, shall vest in and attach to the rural sanitary authority:

All property by this Act transferred to the rural sanitary authority shall be held by them on trust for the several parishes for the benefit of which it was held previously to such transfer.

(2.) If at any time after a rural sanitary authority has become invested with the powers of a highway board in pursuance of this Act, the boundaries of the district of such authority are altered the powers and jurisdiction of such authority in their capacity of highway board shall be exercised within such altered district; and on the application of any authority or person interested the Local Government Board may by order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to highways consequent on the alteration of the boundaries of such rural sanitary district.

(3.) All expenses incurred by a rural sanitary authority in the performance of their duties as a highway board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875 (*a*).

38 & 39 Vict. c. 55.

Highway boards may combine to appoint a district surveyor.

VI. Any two or more highway boards may unite in appointing and paying the salary of a district surveyor, who shall in relation to the district of each of the boards by whom he is appointed have all the powers and duties of a district surveyor under the Highway Acts.

Expenses of highway boards to be paid out of district fund.

VII. All expenses incurred by any highway board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board, shall, notwithstanding anything contained in the Highway Acts, on and after the twenty-fifth day of March one thousand eight hundred and seventy-nine be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund: Provided, that if a highway board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority or authorities of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes (*b*).

Charge of moneys to be hereafter borrowed.

VIII. All moneys borrowed by a highway board after the twenty-fifth day of March one thousand eight hundred and seventy-nine, under the Highway Acts, shall be charged on the district fund, but nothing in this Act shall affect the security, chargeability, or repayment of any moneys borrowed before the twenty-fifth day of March one thousand eight hundred and seventy-nine.

(*a*) See section 229 of that Act, *ante*, p. 263.

(*b*) This provision is extended to the accounts of a waywarden of a highway parish. 45 & 46 Vict. c. 27, s. 7.

Audit of accounts of highway districts and parishes.

IX. The accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe (*c*), and shall be balanced to the twenty-fifth day of March in each year, and as soon as conveniently may be after such day the said accounts shall be audited and examined by the auditor of accounts relating to the relief of the poor (*d*).

Every such auditor shall (as nearly as may be) have, in relation to the accounts of the highway authority of a highway district or highway parish, and of their officers, the same powers and duties as he has in the case of accounts relating to the relief of the poor; and any person aggrieved by the decision of the auditor shall have the same rights and remedies as in the case of such last-mentioned audit.

. . . and the statement of receipt and expenditure by the said section directed to be furnished by every highway board within thirty days after the signature of the accounts by the chairman shall be furnished within thirty days after the completion of the audit under this section.

Power of county authority to enforce performance of duty by defaulting highway authority.

X. Where complaint is made to the county authority that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority, if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint.

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority, give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county

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(*c*) See *Glen's Local Government Orders*, pp. 354, 398, and 412, as to the accounts of local authorities as highway boards.

(*d*) This section is partly repealed by the District Auditors Act, 1879, 42 & 43 Vict. c. 6, *post*; and by the Statute Law Revision Act, 1883. The repealed parts are omitted here.

Appndx.

authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway (*a*).

If the county authority decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway. Until the trial of the indictment is concluded the order of the county authority shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads.

Duration of office of waywarden.

XI. Notwithstanding anything in the Highway Acts, waywardens shall continue in office till the thirtieth day of April in the year following the year in which they were elected, and on that day their successors shall come into office.

XII. (*b*).

Main Roads.

Disturnpiked roads to become main roads, and half the expense of maintenance to be contributed out of county rate.

XIII. For the purposes of this Act and subject to its provisions, any road which has, within the period between the thirty-first day of December one thousand eight hundred and seventy (*c*) and the date of the passing of this Act, ceased to be a turnpike road (*d*), and any road which, being at the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road; and one-half of the expenses incurred from and after the twenty-ninth day of September one thousand eight hundred and seventy-eight by the highway authority in the maintenance (*e*) of such road, shall, as to every part thereof which

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(*a*) If the county authority do not cancel or modify their order they are bound to order an indictment, though the fact that the road is a highway as well as the liability to repair is in dispute. See *Reg.* v. *Cheshire JJ.*, 48 J. P. 262.

(*b*) Section 12 is repealed by the Statute Law Revision Act, 1883.

(*c*) See as to the *West Riding JJ.* v. *Reg.*, *ante*, p. 145.

(*d*) Parts of turnpike roads which become repairable by reason of being included in the extended limit of a borough under the Towns Improvement Clauses Act, 1847, ss. 47—50, do not cease to be turnpike roads within this section. *Lancashire, JJ. of*, v. *Rochdale (Mayor of)*, *ante*, p. 145.

(*e*) This includes the cost of removing snow. *Amesbury Guardians* v. *Justices of Wilts*, 10 Q. B. D. 480; 52 L. J. M. C. 64; 31 W. R. 521; 47 J. P. 184.

is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate out of the county rate, on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction.

Provided that no part of such expenses shall be included in—

(1.) Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereinafter made; or

(2.) Any order made on the council of any borough having a separate court of quarter sessions under section one hundred and seventeen of the Municipal Corporations Act, 1835 (*f*).

The term "expenses" in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

Description of highway areas.

XIV. The following areas shall be deemed to be highway areas for the purposes of this Act; (that is to say),

(1.) Urban sanitary districts:

(2.) Highway districts:

(3.) Highway parishes not included within any highway district or any urban sanitary district.

Power to declare ordinary highway to be a main road.

XV. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road shall make an order accordingly.

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order.

Power to reduce main road to status of ordinary highway.

XVI. If it appears to a county authority that any road within their county which, within the period between the thirty-first day of December one thousand eight hundred and seventy and the date of the passing of this Act, ceased to be a turnpike road ought not to become a main road in pursuance of this Act, such authority shall, before the first day of February one thousand eight hundred and seventy-nine, make an application to the Local Government Board for a provisional order declaring that such road ought not to become a main road.

(*f*) "Provided further, that no part of such expenses incurred from and after the 29th day of September, 1881, shall be included in any precept or warrant issued by the county authority for the county of Southampton for the levying or collection within the Isle of Wight of the county rate for the said county." 44 & 45 Vict. c. 72.

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Subject as aforesaid, where it appears to a county authority that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it ought not to become or ought to cease to be a main road and become an ordinary highway shall make a provisional order accordingly, to be confirmed as hereinafter mentioned.

All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority applying for such order.

Turnpike road in several counties.

XVII. Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes.

Accounts of expenses of maintenance of main roads.

XVIII. Every highway authority shall keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the county authority at such time or times in every year as may be required by the county authority, and the accounts so kept shall, where the accounts of the highway authority are audited under this Act or under section two hundred and forty-seven of the Public Health Act, 1875, be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority may direct.

38 & 39 Vict. c. 55.

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority, the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of main roads by such highway authority for the year in which such default occurs.

Highway district situate in more than one county.

XIX. Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county.

Repair of main roads in certain cases.

XX. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense of any contribution towards the expense of repairing the same would be repayable out of

the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged.

Bridges.

Certain existing bridges may be accepted by county authority.

XXI. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

Contribution out of county rates towards erecting bridges.

XXII. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected (*a*), after the same has been certified in accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half the cost of erecting such bridge.

Extraordinary Traffic (*b*).

Power of road authority to recover expenses of extraordinary traffic.

XXIII. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway whether a main road or not, that, having regard to the average expense

(*a*) The county authority may for this purpose borrow on mortgage of the county rate under 4 & 5 Vict. c. 49. See 43 & 44 Vict. c. 5.

(*b*) This section refers to traffic or weight which is extraordinary or excessive, having regard to the ordinary user of the road, *e. g.*, to the use of the road by traction engines. *Lord Aveland* v. *Lucas*, 5 C. P. D. 211, 351; 43 J. P. 830; *Savin* v. *Oswestry Highway Board*, 44 J. P. 766. Either the owner or his contractor may be proceeded against. *Williams* v. *Davies*, 44 J. P. 347; *Northumberland Whinstone Company* v. *Alnwick Highway Board*, 44 J. P. 360; and see *Barnet* v. *Hoo Highway Board*, 46 J. P. 805, where it was also held that this section applied, though the railway company, for whom the work was done, might also be liable under the Railways Clauses Act, 1845, s. 58. A person who let traction engines to move manure for a farmer was held to be liable, in *R.* v. *Ellis*, 8 Q. B. D. 466; 46 J. P. 295. But traffic arising out of a recognized industry in a district is not within this section (*Wallington* v. *Hoskins*, 6 Q. B. D. 206; 45 J. P. 173), though it is greater than the other traffic on the road, and is not continuous. *Raglan Highway Board* v. *Monmouth Steam Company*, 46 J. P. 598; and see *Reg.* v. *Williamson*, 45 J. P. 505. And the carting of materials for building along a road used generally for agricultural traffic was held not to be extraordinary, in *Pickering Highway Board* v. *Barry*, 8 Q. B. D. 59; 46 J. P. 215. The six months within which proceedings must be taken under this section runs from the surveyor's certificate, and not from the demand of payment. *Pool and Forden Highway Board* v. *Gunning*, 51 L. J. M. C. 49; 46 J. P. 708; but see *White* v. *Colston*, 46 J. P. 565.

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of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid.

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

Discontinuance of unnecessary Highways.

Unnecessary highways may be declared not repairable at the public expense.

XXIV. If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to "as the applicant authority") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows; that is to say,

(1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing; and

(2.) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions.

Appointment of Surveyors in certain Parishes.

Removal of doubt as to appointment of surveyors in certain parishes. 5 & 6 Will. 4, c. 50.

XXV. Whereas doubts have arisen whether a surveyor of highways can be appointed, in pursuance of the Highway Act, 1835, for a parish which does not maintain any highway: Be it therefore enacted, that it shall be lawful for the inhabitants in vestry assembled of any parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any highway or to contribute to any rate applicable to the maintenance of highways), or, on the neglect or refusal of such inhabitants, for the justices at a special sessions for the highways or in petty sessions assembled, at any time to exercise all the powers of the Highway Acts with respect to the election or appointment of a surveyor of highways with or without a salary for such parish or place; and any surveyor so elected or appointed shall have all the powers and duties (including the power of making, assessing, and levying of highway rates) of a surveyor under the Highway Acts.

Bye-laws by County Authority.

Power of county authority to make bye-laws.

XXVI. A county authority may from time to time make, with respect to all or any main roads or other highways within any highway area in their county, and when made alter or repeal, bye-laws for all or any of the purposes following; that is to say,

(1.) For prohibiting or regulating the use of any waggon wain cart or carriage drawn by animal power and having wheels of which the fellies or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon wain cart or carriage, as may be specified in such bye-laws; and

(2.) For prohibiting or regulating the use of any waggon wain cart or other carriage drawn by animal power not having the nails on

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its wheels countersunk in such manner as may be specified in such bye-laws, or having on its wheels bars or other projections forbidden by such bye-laws; and

(3.) For prohibiting or regulating the locking of the wheel of any waggon wain cart or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

(4.) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and

(5.) For regulating the use of bicycles.

Fines to be recovered summarily may be imposed by any such bye-laws on persons breaking any bye-law made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

Saving for Minerals.

To whom minerals under disturnpiked roads to belong. 11 & 12 Vict. c. 63. 38 & 39 Vict. c. 55.

XXVII. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875 (*a*), all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway.

This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better management and control of the highways in South Wales" (*b*).

Part II.

Amendment of Locomotive Acts, 1861 and 1865.

Weight of locomotives and con-

XXVIII. Section three of the Locomotive Act, 1861, and section five of the Locomotive Act, 1865, are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to

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(*a*) *Ante*, p. 146.
(*b*) See the note to section 13, *ante*.

use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say,) **Appndx.**

(1.) A locomotive not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and

(2.) A locomotive drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than fourteen inches; and

(3.) A locomotive shall not exceed nine feet in width or fourteen tons in weight, except as hereinafter provided; and

(4.) The driving wheels of a locomotive shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches.

Construction of wheels. 24 & 25 Vict. c. 70. 28 & 29 Vict. c. 83.

The owner of any locomotive used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorize such locomotive to be used on any turnpike road or highway within the areas respectively above-mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than nine inches in width.

XXIX. The paragraph numbered "secondly" of section three of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

Amendment of 28 & 29 Vict. c. 83, s. 3.

"Secondly, one of such persons, while the locomotive is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same."

XXX. Section eight of the Locomotive Act, 1861, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that every locomotive used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its

Steam locomotives to be constructed so as to consume their smoke.

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24 & 25 Vict. c. 70.

own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway.

Power to local authorities to make orders as to hours during which locomotives may pass over roads.

28 & 29 Vict. c. 83.

XXXI. Section eight of the Locomotive Act, 1865, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding five pounds.

Power of county authority to license locomotives.

XXXII. A county authority may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding forty shillings for every day on which the same is so used.

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes.

Duration of Part II. of Act.

28 & 29 Vict. c. 83.

XXXIII. This part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force (*a*).

Part III.

Procedure and Definitions.

Confirmation of provisional order.

XXXIV. It shall be lawful for the Local Government Board to submit any provisional order made by them under this Act to Parliament for confirmation, and without such confirmation a provisional order shall not be of any validity.

Confirmation of bye-laws.

XXXV. A bye-law made under this Act, and any alteration made therein, and any repeal of a bye-law, shall not be of any validity until

(*a*) That Act is continued by 46 & 47 Vict. c. 40.

it has been submitted to and confirmed by the Local Government Board. Appndx.

A bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed, until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

Recovery of penalties and expenses.

XXXVI. All offences, fines, and expenses under this Act, or any bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

The expression "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to Facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing or determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace.

Form of appeal to quarter sessions.

XXXVII. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made; and

(2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof; such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and

(3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow; and

(4.) Where the appellant is in custody the justice may, if he think

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fit, on the appellant entering into such recognizance, or giving such other security as aforesaid, release him from custody :

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof, they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Interpretation.

XXXVIII. In this Act—

25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

"County" has the same meaning as it has in the Highway Acts, 1862 and 1864, except that every liberty (*a*) not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county :

"County authority" means the justice of a county in general or quarter sessions assembled :

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same (*b*) :

25 & 26 Vict. c. 61.

"Highway district" means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts :

27 & 28 Vict. c. 101.

"Highway board" means the highway board having jurisdiction within a highway district :

25 & 26 Vict. c. 61.

"Highway parish" means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts :

27 & 28 Vict. c. 101.

"Highway authority" means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties :

38 & 39 Vict. c. 55.

"Rural sanitary district" and "rural sanitary authority" mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 (*c*):

"Urban sanitary district" and "urban sanitary authority" mean respectively the districts and authorities declared to be urban sani-

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(*a*) The recorder of such a liberty is a county authority so as to be able to order a rate to be made for the payment of expenses of main roads under section 13, *ante*. *Reg.* v. *Dover* (*Recorder of*), 32 W. R. 876; 48 J. P. 420.

(*b*) Now the Municipal Corporations Act, 1882. See section 242 of that Act.

(*c*) See *ante*, pp. 17—20.

tary districts and authorities by the Public Health Act, 1875 (*d*), except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in any such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act: Appndx. 38 & 39 Vict. c. 55.

"The metropolis" means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city: 18 & 19 Vict. c. 120.

"Quarter sessions" includes general sessions:

"Petty sessional division" means any division for the holding a special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King George the Fourth, chapter forty-three, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Sessions in Counties and Boroughs:"

"Locomotive" means a locomotive propelled by steam or by other than animal power (*e*):

"Person" includes a body of persons corporate or unincorporate.

THE DISTRICT AUDITORS ACT, 1879.

(42 Vict. Cap. 6) (*a*).

An Act to amend the Law with respect to District Auditors.

[28th March, 1879.]

Whereas the auditors of the accounts relating to the relief of the poor (in this Act referred to as district auditors) are under the Poor Law Amendment Act, 1868, appointed by the Local Government Board, and 31 & 32 Vict. c. 122, s. 24.

(*d*) *Ante*, p. 17.

(*e*) This includes a tricycle capable of being propelled by steam. *Parkyns v. Priest*, 7 Q. B. D. 313; 50 L. J. M. C. 148; 30 W. R. 13; 45 J. P. 751.

(*f*) See the Public Health Act, 1875, ss. 247, 248, *ante*, p. 282; also 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113, *ante*.

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22 Vict. c. 26.

are by that Act declared to be civil servants of the State within the operation of the Superannuation Act, 1859, but the remuneration and expenses of such auditors which are by law payable out of local rates are in fact paid partly out of moneys annually provided by Parliament, and partly out of local rates; and whereas it is expedient that in future the whole of such remuneration and expenses should be paid out of moneys voted by Parliament, and that in lieu of the amount now so paid out of local rates an equivalent sum should be raised by means of stamps, in manner hereinafter mentioned, and also that further provision should be made respecting such payment and otherwise respecting such auditors:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Short title.

I. This Act may be cited as the District Auditors Act, 1879.

Provision as to contribution by Treasury and out of local rate for payment of district auditors.

II. After the twenty-fifth day of March, one thousand eight hundred and seventy-nine, all payments to district auditors out of any local rate shall cease, and the whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor (*a*) a stamp duty for the use of Her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned.

Financial statement with stamped certificate of district auditor.

29 & 30 Vict. c. 113, s. 6.

III. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.

He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the board in pursuance of the Local Taxation Returns Acts, 1860 and 1877.

23 & 24 Vict. c. 51.
40 & 41 Vict. c. 66.

Appointment and districts of district auditors.

IV. The Local Government Board may from time to time appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing

(*a*) This will include all sanitary authorities. See section 8, *post*.

Appndx.

the accounts which are for the time being by law subject to be audited by district auditors, and may from time to time remove such auditors.

The board may from time to time assign to district auditors their duties, and the districts in which such auditors respectively are to act, and may from time to time change wholly or in part such duties or districts; and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district within the meaning of any enactment relating to district auditors or their districts, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district.

The board may also, with the consent of the Treasury, appoint from time to time a person or persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties, and any person so appointed shall, subject to any exceptions made by the terms of his appointment, have the same powers and duties and be subject to the same obligations as the district auditor whom he is appointed to assist.

The board, with the like consent, may assign to a person so appointed such salary or remuneration and such sum for his expenses as may seem fit, and such salary, remuneration, and expenses shall be paid out of moneys provided by Parliament.

Regulations as to audit.

V. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834 (*b*).

4 & 5 Will. 4, c. 76.

Stamp duties under Inland Revenue.

VI. The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connexion with stamp duties, shall apply accordingly; and such duties may, if the commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

Failure to submit financial statement.

VII. If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each

(*b*) For this order reference should be made to *Glen's Local Government Orders.*

Appndx. offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice (*a*)

Definitions. VIII. In this Act,—

The expression "local rate" means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression "local authority" means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression "prescribed" means prescribed from time to time by the Local Government Board.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

Provision for existing auditors. IX. The Local Government Board, with the approval of the Treasury, shall as soon as may be after the passing of this Act determine the salary or remuneration to be paid to the district auditors holding office at the passing of this Act, and the amount to be allowed for their expenses, regard being had to the sums which such officers have heretofore received out of local rates, as well as out of moneys provided by Parliament, and to any change of their duties which may be made in pursuance of this Act.

Provision for first year. X. If in the year one thousand eight hundred and seventy-nine the audit of the accounts of the receipts and expenditure of any local authority for any period ending on some day of the month of March has been completed before the expiration of two months after the passing of this Act, the local authority shall submit the financial statement required by this Act to the auditor within the said two months.

Repeal of Acts. XI. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

(1.) This repeal shall not affect anything done or suffered, or any right acquired or accrued, under any enactment hereby repealed; and

(2.) Any auditor appointed in pursuance of any enactment hereby repealed shall (save as may be prescribed) have the same powers and duties and be subject to the same obligations as if such enactment had not been repealed.

Saving of certain fees and expenses. XII. Nothing in this Act shall prevent a district auditor from recovering any sum in respect of an audit held by him prior to the

(*a*) By whom? Probably only by the Crown. *Bradlaugh* v. *Clarke*, 8 App. Cas. 354; 52 L. J. Q. B. 505; 48 L. T. (N.S.) 681; 31 W. R. 677; 47 J. P. 405.

twenty-fifth day of March, one thousand eight hundred and seventy-nine, or in respect of an audit of accounts made up to some day prior to that day, and the audit of which might have been held before the said day, or from recovering any expenses incurred, or which he may hereafter incur, in any proceedings which he is authorized or required to take or defend under the statutes in that behalf. Appndx.

FIRST SCHEDULE.

Scale of Stamp Duties payable by Local Authorities. Section 2.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20*l.*	5*s.*
20*l.* and under 50*l.*	10*s.*
50*l.* and under 100*l.*	1*l.*
100*l.* and under 500*l.*	2*l.*
500*l.* and under 1,000*l.*	3*l.*
1,000*l.* and under 2,500*l.*	4*l.*
2,500*l.* and under 5,000*l.*	5*l.*
5,000*l.* and under 10,000*l.*	10*l.*
10,000*l.* and under 20,000*l.*	15*l.*
20,000*l.* and under 50,000*l.*	20*l.*
50,000*l.* and under 100,000*l.*	30*l.*
100,000*l.* and upwards.	50*l.*

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

SECOND SCHEDULE.

Acts Repealed.

Appndx. Section 11. A description or citation of a portion of a statute is inclusive of the words, section, or other part first and last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
4 & 5 Will. 4. c. 76	The Poor Law Amendment Act, 1834	Section forty-six, so far as relates to officers for the examining, auditing, allowing, and disallowing of accounts.
7 & 8 Vict. c. 101	The Poor Law Amendment Act, 1844	Section thirty-two down to "Union therefrom." Section thirty-seven. Section forty-nine, from "being at the time the auditor of" down to "may be appointed," and from "and the salary of every such auditor" down to "board of guardians."
12 & 13 Vict. c. 103	The Poor Law Amendment Act, 1849	Section eight.
30 & 31 Vict. c. 6	The Metropolitan Poor Act, 1867	Section thirty-six and section thirty-seven.
31 & 32 Vict. c. 122	The Poor Law Amendment Act, 1868	Section twenty-four. Section twenty-five, except as regards existing auditors.
33 & 34 Vict. c. 75	The Elementary Education Act, 1870	Section sixty, from "for the audit district" down to "in a summary manner" at the end of sub-section one.
38 & 39 Vict. c. 55	The Public Health Act, 1875	Section two hundred and forty-seven, from "for the union" in sub-section one down to "from the place of audit" at the end of sub-section two.
41 & 42 Vict. c. 77	The Highways and Locomotives (Amendment) Act, 1878	Section nine, from "for the audit district" down to "is situate," and from "the auditor shall receive such remuneration" down to "in a summary manner."

THE SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879.

(42 & 43 Vict. Cap. 30) (*a*).

An Act to amend the Sale of Food and Drugs Act, 1875.

[21st July, 1879.]

Appndx.

38 & 39 Vict. c. 63.

Whereas conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

I. This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

In sale of adulterated articles no defence to allege purchase for analysis.

II. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects (*b*).

Officer, inspector, or constable may obtain a sample of milk at the place of delivery to submit to analyst.

III. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk ; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act (*c*).

(*a*) See 38 & 39 Vict. c. 63, *ante*, p. 804.

(*b*) See 38 & 39 Vict. c. 63, s. 6, *ante*, p. 805. The last clause of this section was passed to meet the decision in *Davidson* v. *Macleod*, 42 J. P. 43, 50.

(*c*) It is not necessary to state the intention and to offer to divide the sample of milk thus taken, as required by 38 & 39 Vict. c. 63, s. 14. *Rouch* v. *Hall*, *ante*, p. 808 ; *Chappell* v. *Emson*, 48 J. P. 200.

Appndx.

Penalty for refusal to give milk for analysis.

IV. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

Extension of Act as to sale in streets, &c

V. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

Reduction allowed to the extent of 25 degrees under proof for brandy, whisky, or rum, and 35 degrees for gin.

VI. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin (*a*).

Extension of meaning of "county."

VII. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act.

Quarter sessions boroughs not to contribute to county analyst.

5 & 6 Will. 4, c. 76.

VIII. The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporation Act, 1835 (*b*), to be sent by him to such town council.

Provision for boroughs with separate police.

IX. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force (*c*).

Special provision as to time for proceedings,

X. In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear

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(*a*) This section was passed in consequence of the decision in *Pashler* v. *Stevenett*, 35 L. T. (N.S.) 862; 41 J. P. 136; *Webb* v. *Knight*, 2 Q. B. D. 530; 46 L. J. M. C. 264; 41 J. P. 726.

Where the appellant sold to the respondent gin more than thirty-five degrees under proof, but at the time of sale brought to his knowledge a printed notice hanging up in the room to the effect that all spirits were sold "as diluted spirits, no alcoholic strength guaranteed," it was held that this section did not deprive the appellant of his ground of defence under 38 & 39 Vict. c. 63, s. 6, that the sale was not to the prejudice of the purchaser. *Gage* v. *Elsey*, 10 Q. B. D. 518; 52 L. J. M. C. 44; 31 W. R. 501; 47 J. P. 391.

(*b*) Now the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50. See section 242 of that Act.

(*c*) See 38 & 39 Vict. c. 63, s. 29, *ante*, p. 812.

before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.

THE PETROLEUM ACT, 1879.

(42 & 43 Vict. Cap. 47) (*d*).

An Act to continue and amend the Petroleum Act, 1871.

[11th August, 1879.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction of Act. 34 & 35 Vict. c. 105.

I. This Act may be cited as the Petroleum Act, 1879.

This Act shall be construed as one with the Petroleum Act, 1871, and together with that Act may be cited as the Petroleum Acts, 1871 and 1879.

Alteration of test. 34 & 35 Vict. c. 105.

II. Whereas by the Petroleum Act, 1871, it is enacted that the term "petroleum to which this Act applies" means such of the petroleum defined by that Act as, when tested in manner set forth in Schedule One to that Act, gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer, and it is expedient to alter the said test: Be it therefore enacted that—

34 & 35 Vict. c. 105.

In the Petroleum Act, 1871, the term "petroleum to which this Act applies" shall mean such of the petroleum defined by section three of that Act as, when tested in manner set forth in Schedule One to this Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

34 & 35 Vict. c. 105.

Every reference in the Petroleum Act, 1871, to Schedule One to that Act shall be construed to refer to Schedule One to this Act.

Verification of test apparatus.

III. A model of the apparatus for testing petroleum, as described in Schedule One to this Act, shall be deposited with the Board of Trade, and the Board of Trade shall, on payment of such fee, not exceeding five shillings, as they from time to time prescribe, cause to be compared

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(*d*) Sec 34 & 35 Vict. c. 105, *ante*, p. 769, and 44 & 45 Vict. c. 67, *post*.

Appndx.

with such model and verified every apparatus constructed in accordance with Schedule One to this Act which is submitted to them for the purpose, and if the same is found correct shall stamp the same with a mark approved of by the board and notified in the *London Gazette.*

An apparatus for testing petroleum purporting to be stamped with the said mark shall, until the contrary is proved, be deemed to have been verified by the Board of Trade.

All fees under this section shall be paid into the Exchequer.

Continuance of 34 & 35 Vict. c. 105.

IV. The Petroleum Act, 1871, shall continue in force until otherwise directed by Parliament (*a*).

Commencement of Act.

V. This Act shall come into operation on the thirty-first day of December, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Repeal of part of 34 & 35 Vict. c. 105.

VI. The Petroleum Act, 1871, shall be repealed after the commencement of this Act to the extent in the third column of the Second Schedule to this Act mentioned.

34 & 35 Vict. c. 105.

Provided that any sample of petroleum taken before the commencement of this Act shall be tested in manner set forth in Schedule One to the Petroleum Act, 1871, and any offence committed before the commencement of this Act shall be prosecuted, and any investigation, legal proceeding, or remedy in relation to such offence, or to any act done before the commencement of this Act, shall be instituted, carried on, and have effect as if the provisions of this Act, other than those continuing

34 & 35 Vict. c. 105.

the Petroleum Act, 1871, had not been passed.

FIRST SCHEDULE.

Mode of testing Petroleum so as to ascertain the Temperature at which it will give off Inflammable Vapour.

Specification of the Test Apparatus.

The following is a description of the details of the apparatus:

The oil cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top, and $1\frac{1}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B.W.G.) tinned inside. A bracket, consisting of a short stout piece of wire bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B.W.G.), which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions upon which it may be made to oscillate; it is

(*a*) The Act of 1871 was temporary only.

provided with a spout, the mouth of which is one-sixteenth of an inch in diameter. The socket which is to hold the thermometer is fixed at such an angle and its length is so adjusted that the bulb of the thermometer when inserted to its full depth shall be 1½″ below the centre of the lid.

The cover is provided with three square holes, one in the centre, $\frac{5}{10}$″ by $\frac{1}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of and in line with the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B.W.G.), an inner one of 3″ diameter and 2½″ height, and an outer one of 5¼″ diameter and 5¾″ height; they are soldered to a circular copper plate (20 B.W.G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about ⅜″; that is, its diameter is about ⅝″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite, to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath and of the oil lamp is one-half of an inch. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B.W.G.) flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is 6½″. One of the three legs of the stand serves as a support for the spirit lamp attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The theremometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way. It is fitted with a metal collar, fitting the socket, and the part of the tube below the scale should have a length of about 3½″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a

Appndx. space at the top, and ranges from about 55° F. to 150 F.; it measures from end of ivory back to bulb 2¼″.

NOTE.—A model apparatus is deposited at the Weights and Measures Department of the Board of Trade.

Directions for applying the Flashing Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication, or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candle wick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65° the samples to be tested should be cooled down (to about 60°) by immersing the bottles containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is placed into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum, which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached

about 66° the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree, in the following manner :— Appndx.

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows :—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

SECOND SCHEDULE.

Act repealed.

Year and Chapter.	Title.	Extent of Repeal.
34 & 35 Vict. c. 105	The Petroleum Act, 1871.	Section three, from "and the term petroleum to which this Act applies" inclusive to the end of the section. Section eighteen.

THE ARTIZANS AND LABOURERS DWELLINGS IMPROVEMENT ACT, 1879.

(42 & 43 VICT. CAP. 63) (*a*).

An Act to amend the Artizans and Labourers Dwellings Improvement Act, 1875. [15th August, 1879.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. This Act may be cited as the Artizans and Labourers Dwellings Improvement Act, 1879. Short title and construction of Act.

(*a*) See 38 & 39 Vict. c. 36, *ante*, p. 784.

Appndx.

38 & 39 Vict. c. 36.

This Act shall be construed as one with the Artizans and Labourers Dwellings Improvement Act, 1875 (*a*), (in this Act referred to as the principal Act,) and the principal Act and this Act may be cited together as the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879.

Amendment of schedule to principal Act.

II. The schedule to the principal Act shall be construed as if the schedule to this Act formed part thereof.

As to assessment of compensation.

III. On the occasion of assessing the compensation payable under any improvement scheme (*b*) in respect of any house or premises situate within an unhealthy area, evidence shall be receivable by the arbitrator to prove that the date of the confirming Act authorizing such scheme, or at some previous date not earlier than the date of the official representation in which the scheme originated, such house or premises was by reason of its unhealthy state, or by reason of overcrowding or otherwise, in such a condition as to have been a nuisance within the meaning of the Acts relating to nuisances; and if the arbitrator is satisfied that from either of such causes as aforesaid, such house or premises was, at such dates as aforesaid or either of them, a nuisance as aforesaid, he shall then determine what would have been the value of such house or premises supposing the nuisance to have been abated, and what would have been the expense of abating the nuisance; and the amount of compensation payable in respect of such house or premises shall be an amount equal to the estimated value of the house and premises after the nuisance was abated, and after deducting the estimated expense of abating the nuisance.

Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.

IV. Whereas by the fifth section of the principal Act (*c*) it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at least as many persons of the working classes as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas it not unfrequently happens that, having due regard to the requirements of persons of the working classes displaced by an improvement scheme, equally convenient accommodation at a much less cost can be furnished to such persons or some of them at some place other than within the area or immediate vicinity of the area from which they have been displaced: Be it enacted that—

Where it is proved to the satisfaction of the confirming authority on an application to authorize or modify an improvement scheme that equally convenient accommodation can be provided for any persons of the working class displaced by an improvement scheme at some place other than within the area or the immediate vicinity of the area comprised in the improvement scheme, and it is also proved to the satisfaction of such authority that the required accommodation has been or is about to be forthwith provided, it shall be lawful for the confirming authority accordingly to authorize any such improvement scheme, or to

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(*a*) *Ante*, p. 784.
(*b*) See the principal Act, s. 19, *ante*, p. 792.
(*c*) *Ante*, p. 786.

permit a modification of any such scheme, and the requirements of the principal Act with respect to providing accommodation for persons of the working class shall, to the extent to which accommodation is provided in accordance with this section, be deemed to have been complied with (*d*).

A local authority may for the purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

V. The Acts relating to nuisances mean— Definition of "Acts relating to nuisances."

as respects any place in Ireland, the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place; and 41 & 42 Vict. c. 52.

as respects the metropolis, as defined by the Public Health Act, 1875, the Nuisances Removal Acts as defined by the Sanitary Act, 1866, or any Act amending the same, and any local Act which contains any provisions with respect to nuisances in that place; and 38 & 39 Vict. c. 56. 29 & 30 Vict. c. 41.

as respects any other place in England, the Public Health Act, 1875, and any local Act which contains any provisions with respect to nuisances in that place. 38 & 39 Vict. c. 55.

SCHEDULE.

1. The publication by the local authority of the appointment of the arbitrator, and the other particulars mentioned in article six of the schedule to the principal Act, shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained. Notice of appointment of arbitrator.

2. The arbitrator shall have the same power of apportioning any rent-service, rentcharge, chief or other rent payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845. Power of arbitrator as to apportionment.

3. Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory. Amendment respecting severance of properties. 8 & 9 Vict. c. 18.

(*d*) See the amending provisions of 45 & 46 Vict. c. 54, *post*.

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The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided by article twenty-six of the schedule to the principal Act, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury ; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

Omitted interests.

4. The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims ; with this qualification, that the first award of the arbitrator shall be final, and not provisional.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

THE ARTIZANS AND LABOURERS DWELLINGS ACT (1868) AMENDMENT ACT, 1879.

(42 & 43 Vict. Cap. 64) (*a*).

An Act to extend the powers of the Artizans Dwellings Act of 1868, *by provisions for compensation and rebuilding.* [15th August, 1879.]

31 & 32 Vict. c. 130.

Whereas it is expedient to extend and amend the provisions of the Artizans and Labourers Dwellings Act, 1868 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title, and construction of Act.

I. This Act may be cited as the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and shall, so far as is consistent with the tenor thereof, be construed together with the Artizans and Labourers Dwellings Act, 1868 (*a*) (hereinafter referred to as "the Act of 1868"), as one Act.

31 & 32 Vict. c. 130.

(*a*) See 31 & 32 Vict. c. 130, *ante*, p. 697, and 45 & 46 Vict. c. 54, Part II., *post*.

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Application of Act, and definition of "local authority," "local rate," and "clerk of local authority."

II. The Act shall apply only to the places named in the first column of Table (A.) in the first schedule annexed hereto, and "local authority," "local rate," and "clerk of local authority" shall mean the "bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table, and the explanation annexed thereto, shall be of the same force as if they were enacted in the body of the Act of 1868 and this Act.

31 & 32 Vict. c. 130.

Officer of health.

III. The term "officer of health" as used in the Act of 1868, shall as respects any urban sanitary district in England, mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health Act, 1875 (*b*), and as respects any urban sanitary district in Ireland shall mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health (Ireland) Act, 1878, and shall not include any other officer.

31 & 32 Vict. c. 130.
38 & 39 Vict. c. 55.
41 & 42 Vict. c. 52.

8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated.

IV. The Lands Clauses Consolidation Act, 1845 (*c*), and the Lands Clauses Consolidation Acts Amendment Act, 1860 (*d*), except the provisions of those Acts with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters of the undertaking, and save so far as any of the provisions of those Acts respectively are expressly varied by or are inconsistent with the provisions of this Act, are incorporated with the Act of 1868 as amended by this Act, and for the purpose of such incorporation the Act of 1868, as amended by this Act, shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking.

31 & 32 Vict. c. 130.

Owner may require local authority to purchase premises.

V. Notwithstanding anything in the Act of 1868, the owner of any premises specified in an order of the local authority made under that Act, and requiring him to execute any works or to demolish such premises, may within three months after service on him of the order, require the local authority in writing to purchase such premises.

31 & 32 Vict. c. 130.

In default of agreement amount of compensation to be settled by arbitration.

VI. Where the owner of any premises has in manner aforesaid required the local authority to purchase the same, and no agreement is come to between such owner and the local authority as to the amount of the compensation to be paid by the local authority, the amount of the compensation to be paid by the local authority for the premises shall be settled by arbitration in manner provided by this Act.

Provisions as to arbitration.

VII. In all cases in which the amount of any compensation is, in pursuance of this Act, to be settled by arbitration, the following provisions shall have effect; (namely),

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board;

(2.) In settling the amount of any compensation—

(*a.*) The estimate of the value of the premises shall be based on the fair market value as estimated at the time of

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(*b*) Section 191, *ante*, p. 222.
(*c*) *Ante*, p. 505.
(*d*) *Ante*, p. 681.

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the valuation being made of such premises, and of the several interests in such premises, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, *and all circumstances affecting such value* (*a*), and without any additional allowance in respect of compulsory purchase ; and

(*b.*) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other premises of the same owner by the alteration or demolition by the local authority of the premises ;

(3.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the premises, or on payment thereof in manner prescribed by the Lands Clauses Consolidation Act, 1845, the owner shall, when required by the local authority, convey his interest in such premises to them, or as they may direct ; and in default thereof, or if the owner fails to adduce a good title to such premises to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner, and with such consequences, as are mentioned in the Lands Clauses Consolidation Act, 1845 ;

8 & 9 Vict. c. 18.

8 & 9 Vict. c. 18.

(4.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845 (*b*), shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this Act ;

8 & 9 Vict. c. 18.

(5.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the premises included in one or more order or orders made by the local authority ;

(6.) In the event of the death, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered ;

(7.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority ; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per centum per annum for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator ;

(*a*) These words are repealed. See 45 & 46 Vict. c. 54, s. 10, *post.*
(*b*) *Ante*, pp. 513, 514.

(8.) The award of an arbitrator shall be final and binding on all parties. Appndx.

Application of 31 & 32 Vict. c. 130, s. 23, to site of purchased premises.

VIII. Section twenty-three of the Act of 1868 shall apply to the site of any premises purchased by a local authority which the owner has elected to retain under the provisions of this Act.

Recovery of expenses incurred by local authority in executing works.

IX. Where the local authority, on default of the owner of any premises, themselves execute the required works, they may sell the old materials and retain the proceeds towards the expenses incurred by them in executing such works, and may recover the balance of such expenses from such owner as a debt due from him by action in any court of competent jurisdiction.

The expression "court of competent jurisdiction" shall, for the purposes of this section, be read and have effect as if the debt herein referred to were a simple contract debt, and not a debt or demand created by statute.

Disposal of land acquired by local authority under 30 & 31 Vict. c. 130.

X. Any land or premises acquired by any local authority under the Act of 1868 and this Act may from time to time be sold, let, and disposed of in like manner as any other lands acquired for sanitary purposes by such authority, and not needed for the purposes for which they were acquired; but in cases where the approbation of any Government department is required for any such disposal, then only with that approbation (*c*).

Local authority may dedicate land as highway, &c. 30 & 31 Vict. c. 130.

XI. A local authority may, where they so think fit, dedicate any land acquired by them under the authority of the Act of 1868 and this Act as a highway or other public place.

Metropolitan Board empowered to enforce Act in case local authority fail to do so.

XII. In the event of any local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the Metropolitan Board of Works (hereinafter called the board) requiring such local authority to put in force the provisions of this Act, in respect of any premises described in such notice, then and in such case all the powers vested in the local authority under this Act, so far as relates to such premises, shall become vested in the said board, and the board shall have power so far as relates to any such premises to act in all respects for the purposes of this Act as though they were the local authority, and all expenses incurred by the board under this Act may be recovered by the board from and shall upon demand be paid by the local authority out of the local rates which they are authorized to make or apply for the purpose of defraying expenses incurred by them under this Act, and the amounts so payable to the board may and shall be included in the precepts from time to time issued by the board under the Metropolis Management Acts to the local authority (*d*).

Repealing 31 & 32 Vict. c. 130, s. 2, and Sched. I.

XIII. Section two of the Act of 1868, and the First Schedule to that Act are hereby repealed.

(*c*) See the Public Health Act, 1875, ss. 175—177, *ante*, pp. 203—9.

(*d*) This section is amended by 45 & 46 Vict. c. 54, s. 11, *post*.

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Appropriation of property acquired by local authority.

XIV. In the metropolis the local authority or their lessees shall hold all property acquired by them under this Act upon trust to carry into effect some one or more of the purposes thereof:

The purposes of this Act shall in the metropolis be deemed to be—

First, the providing, by the construction of new buildings or the repairing or improvement of existing buildings, the labouring classes with suitable dwellings situate within the jurisdiction of the local authority:

Second, the opening out of closed or partially closed alleys or courts inhabited by the labouring classes, and widening of the same, by pulling down any building, or otherwise leaving such open spaces as may be necessary to make such alleys or courts healthful:

But subject to the aforesaid trust, the local authority or lessees may from time to time sell, exchange, lease, or otherwise dispose of any premises acquired by them under this Act: Provided that if any property acquired by the local authority under this Act shall not within seven years after the acquisition thereof be disposed of by way of absolute sale or of exchange, or by lease for a period of not less than ninety-nine years, or be effectually dealt with by way of public improvement, then and in such case the property so acquired may be sold by the order of one of Her Majesty's principal Secretaries of State, by public auction or public tender, with full power to fix a reserve price and subject to such terms and conditions as the said Secretary of State shall deem proper, and the proceeds of such sale, after deducting the whole of the expenses attending the same, shall be paid to the local authority to be by them applied to the purposes of this Act, and a receipt signed by the said Secretary of State for the amount of the purchase money shall absolutely vest such property in the purchaser for the whole estate and interest of the local authority therein subject to the before-mentioned terms and conditions.

Lessee acquiring property under this Act to execute works to satisfaction of surveyor.

XV. Every lessee who in the metropolis shall acquire any property under this Act shall forthwith, at his own costs, charges, and expenses, proceed to execute thereon, to the satisfaction of the surveyor of the local authority, the works shown on the plans referred to in the specifications prepared by the local authority, and such other works (being for some one or more of the purposes of this Act) as may have been agreed upon between the local authority and the lessee; and if the lessee shall at any time, in the opinion of the surveyor of the local authority, fail to exercise due diligence in the execution of the works, the local authority may, by themselves, their contractors, servants, workmen, and agents, enter upon the premises and execute the works so far as the same shall be incomplete, and reimburse themselves all costs, charges, and expenses incident to the execution of such works by sale of the old materials, so far as the same may extend, or may recover from the parties making default the amount of such costs, charges, and expenses as a debt in Her Majesty's High Court of Justice, and shall also have an express charge upon the premises in respect of such amount, which charge may be realized by a sale of the premises, or any part thereof.

Lessee to give security for execution of works.

XVI. In the metropolis the local authority may also, by the resolution empowering any lessee to acquire property under this Act, require such lessee to give such security as the local authority shall think fit for the due execution by the lessee of the works to be done by them.

Premises, &c., to be forfeited on lessee not completing works within specified time.

XVII. If any lessee shall not, within three calendar months after he shall have obtained possession of any part of the premises in the metropolis, commence the execution of the works to be done by him, or if he shall not complete the same to the satisfaction of the local authority within one year after obtaining such possession, or within such extended time as the local authority shall by resolution determine, then the premises, together with all building materials, plant, tools, and other articles and effects thereon, shall be absolutely forfeited to and vest in the local authority, and they shall thenceforth hold the same for the purposes of this Act.

Annual account to be presented by the local authority.

XVIII. Every local authority shall, in the metropolis, every year present to one of Her Majesty's principal Secretaries of State, and in all other places shall present to the Local Government Board, in such form as he directs, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this Act.

Contracts for building, repairing, lighting, watering, &c., workmen's dwellings.

XIX. The local authority in the metropolis may from time to time, with the sanction and approval of one of Her Majesty's Secretaries of State, enter into any contract with any persons or companies for building and for altering and enlarging, repairing, and otherwise improving such workmen's dwellings, forming part of any premises held by the said authority for the purposes of this Act, and for lighting and for supplying the same with water, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and true copies of all such contracts shall be entered in books to be kept for the purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the local authority for the purposes of this Act, unless previous to the making thereof fourteen days notice shall have been given in one or more of the public newspapers published in or circulating within the jurisdiction of the local authority, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the local authority at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the local authority to contract with the person offering the lowest price.

Power of local authority to make bye-laws for regulation of dwelling-houses

XX. The local authority may from time to time make, alter, and repeal bye-laws for the regulation of the dwellings belonging to them under this Act, and there may be imposed by such bye-laws a penalty, recoverable in a summary manner, not exceeding two pounds for any breach of the bye-laws by the tenants or occupiers of the said houses. A copy of such bye-laws shall be given to every tenant or occupier upon his taking possession of every such dwelling, or of any portion thereof. A bye-law under this Act and any alteration made therein, and any repeal of a bye-law, shall not be of any validity until it has been sub-

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mitted to and confirmed by one of Her Majesty's principal Secretaries of State in the case of the metropolis or by the Local Government Board in the case of all other places.

Expenses of local authority.

XXI. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of the local rate; and it shall be lawful for the local authority, notwithstanding any limit contained in any Act of Parliament respecting any local rate, to levy such local rate, or any increase of the same, not exceeding twopence in the pound in any year, for the purposes of this Act.

As to loans from Public Works Loan Commissioners. 16 & 17 Vict. c. 40.

XXII. The Public Works Loan Commissioners, as defined by the Public Works Loans Act, 1853 (*a*), or in the metropolis the Metropolitan Board of Works, may, if they think fit, lend to any local authority, and any local authority may borrow from the said commissioners, or in the metropolis from the Metropolitan Board of Works, such sums as the said authority may require for the purposes of this Act, subject to the following regulations:

1. The amount of every loan shall be sanctioned by the Commissioners of the Treasury:
2. No loan shall be made except for the purpose of defraying the cost of building suitable dwellings for the labouring classes, or of defraying the cost of purchasing sites, and of building thereon such dwellings:
3. Every loan, with interest thereon at such rate as shall be agreed upon, but not a less rate of interest than four per centum per annum, shall be secured by a mortgage, in the form set forth in the Third Schedule hereto (*b*), of certain dwellings for the labouring classes erected or improved, or about to be erected or improved, by a local authority, in pursuance of this Act, and of the sites of such dwellings, and the appurtenances, if any, and also by a mortgage of the local rate:
4. Any sum borrowed on mortgage under this section may be paid off by sale of the premises comprised in such mortgage, or by instalments, or otherwise, as may be agreed upon between the parties, so that the period of the borrowing do not exceed seven years:
5. The amount borrowed by any local authority on the mortgage of any buildings and sites, and of the local rate, shall not exceed the estimated value of the proposed buildings, including the sites thereof, comprised in such mortgage, such value to be ascertained in manner approved by the said Public Works Loan Commissioners:
6. The powers conferred by Act of Parliament on the said Public Works Loan Commissioners in relation to loans shall apply to any loans made under this section.

(*a*) This Act is repealed by the Public Works Loans Act, 1875, *ante*, p. 850.
(*b*) The Act does not contain a third schedule, consequently the 43 Vict. c. 8, *post*, was passed.

Jurisdiction of certain magistrates.

XXIII. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say, as to England, by any metropolitan police magistrate or other stipendiary or police magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the city of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall; as to Scotland, by the sheriff or sheriff substitute, or by any two magistrates of a burgh; and as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by two or more justices of the peace in petty sessions.

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SCHEDULES.

FIRST SCHEDULE.

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TABLE A.—ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of London and the liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of Sewers of the city of London. Local Act, 11 & 12 Vict. c. 163.	The consolidated rate, 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The metropolis, exclusive of the city of London and the liberties thereof.	The vestry of each parish, or the Board of Works of each district elected under the Metropolis Local Management Act, 1855, and the Acts amending the same within their respective parishes and districts. The Metropolitan Board of Works.	Rate to be levied in the metropolis in the same manner as the rate leviable by law by the vestry or district Board of Works respectively. 25 & 26 Vict. c. 120, s. 5.	Clerk of the vestry or district board.
Boroughs or urban sanitary district as aforesaid.	The urban sanitary authority.	The fund or rate out of which the general expenses of the execution of the Public Health Act, 1875, are defrayed by the urban sanitary authority.	The clerk of the urban sanitary authority.

Explanation.

For the purposes of this Act the following words shall have the meanings hereinafter assigned to them; (that is to say,)

(1.) "The metropolis" has the same meaning as it has in the Metropolis Management Act, 1855.

THE PUBLIC WORKS LOANS ACT, 1879.

(42 & 43 Vict. Cap. 77) (*d*).

An Act to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant Money for the purpose of Loans by the said Commissioners; and for other purposes in relation thereto. [15th August, 1879.]

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Whereas it is expedient to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant money for the purpose of loans by those commissioners:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as the Public Works Loans Act, 1879.

Part I.

Amendment of Acts.

Minimum rate of interest for loans.

II. Where a loan is granted by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, and the rate of interest for such loan, fixed by the special Act which authorizes the commissioners to grant the loan, is a special rate less than five per cent., such loan shall, notwithstanding anything in the special Act, bear interest at a rate not less than the rate in the special Act, and such other rate as may be necessary, in the judgment of the Lords Commissioners of the Treasury, in order to enable the loans to be made without loss to the Exchequer.

Restriction on amount of loan to one borrower.

III. The advances made by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, under any one Act, in any one financial year to one borrower (notwithstanding anything in the Act authorizing such loan) shall not exceed in the aggregate one hundred thousand pounds.

(*a*) See 38 & 39 Vict. c. 89, *ante*, p. 828.

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Act not to apply to old loans, to loans specially saved by 39 & 40 Vict. c. 31, ss. 4, 5, nor to loans under 33 & 34 Vict. c. 46.

IV. Nothing in this Act shall apply to any loan granted before the passing of this Act, nor to any instalments subsequently advanced in respect of such loan, nor to any advance which the Public Works Loan Commissioners are authorized to make, by sections four and five of the Public Works Loans Money Act, 1876, and the Acts in those sections mentioned, to the Port Patrick and Belfast and County Down Railway Companies, and for improving the harbour of Colombo, nor to any advance under the Irish Land Act, 1870, or any Act authorizing loans for the improvement, drainage, or purchase of lands in Ireland.

Provided, that where though a loan has not been actually granted before the passing of this Act, negotiations for the same have proceeded so far as to make it in the opinion of the Commissioners of Her Majesty's Treasury inequitable for such loan to be subject to the provisions of this Act or any of them, such loan shall, for the purposes of those provisions, be deemed to be a loan granted before the passing of this Act.

V. (*a*).

Power of Public Works Loan Commissioners to lend to labourers dwellings companies.

VI. The Public Works Loan Commissioners may lend to any company, society, or association established for the purpose of constructing or improving dwellings for the labouring classes, any sum or sums to be applied towards the construction of dwellings suitable for the labouring classes, and towards the purchase of land for that purpose.

Every sum so lent shall be repaid within a period not exceeding fifteen years from the time of the advance, with interest thereon at such rate not less than three and a half per centum per annum, as may be agreed upon between the commissioners and the borrower.

Every sum so advanced shall be advanced in accordance with the Public Works Loan Commissioners Act, 1875.

38 & 39 Vict. c. 89.

Regulations as to advances by National Debt Commissioners to the Public Works Loan Commissioners.

VII. If the Act granting money for the purpose of loans by the Public Works Loan Commissioners authorizes the Commissioners for the Reduction of the National Debt to advance money for such purpose, those commissioners may, out of moneys in their hands on account of savings banks or Post Office savings banks, advance to the Public Works Loan Commissioners any sum or sums of money not exceeding in the whole the amount named in the said Act, during the period named in the said Act, or, if no period is named, during the financial year for which such Act was passed.

Every sum so advanced shall be placed to the account to which money issued by the Treasury to the National Debt Commissioners for the purpose of loans under the Public Works Loans Act, 1875, is, for the time being required to be placed, and shall be held and disposed of accordingly.

38 & 39 Vict. c. 89.

Every sum so advanced shall be repaid with interest at such rate, not exceeding five per cent. per annum, within such number of years, not exceeding thirty, as may be agreed on, with the approval of the Commissioners of Her Majesty's Treasury, between the Public Works Loan Commissioners and the Commissioners for the Reduction of the National Debt.

(*a*) This section gives power to the Public Works Loan Commissioners to lend to the Peabody trustees in London.

Appndx.

Every sum so advanced shall be repaid, and the interest from time to time accruing thereon shall be paid, out of the sums paid or applicable in or towards the discharge of the principal or interest of any loan granted by the Public Works Loan Commissioners whether before or after the passing of this Act, and whether before or after the advance of the said sum, and, if such sums are insufficient, shall be charged on and paid out of the Consolidated Fund of the United Kingdom.

For the purpose of such repayment a sufficient portion of the sums so paid or applicable as aforesaid shall, under the direction of the Public Works Loan Commissioners, be paid to the Commissioners for the Reduction of the National Debt, and not into the receipt of the Exchequer.

The security for every sum advanced in pursuance of this section shall be given in such form and manner as may be from time to time directed by the Commissioners of Her Majesty's Treasury, and may be given and executed by the secretary to the Public Works Loan Commissioners in the name of himself and his successors on behalf of the commissioners.

This section shall apply in the case of the Commissioners of Public Works in Ireland in like manner as if it were re-enacted, with the substitution of "the Commissioners of Public Works in Ireland" for "the Public Works Loan Commissioners," and of Part II. of the Public Works Loans (Ireland) Act, 1877, for the Public Works Loans Act, 1875.

40 & 41 Vict. c. 27. 38 & 39 Vict. c. 89.

Application of 38 & 39 Vict. c. 89, to money advanced by National Debt Commissioners.

VIII. For the purpose of the provisions of the Public Works Loans Act, 1875, relating to the grant of money for the purpose of loans by the Public Works Loan Commissioners, all money advanced by the Commissioners for the Reduction of the National Debt in pursuance of this Act shall be deemed to be money granted by Parliament for the purpose of the said loans.

Composition of Debt.

IX. (*b*).

Part II.

Provision of Money for Public Works Loan Commissioners.

Grant of 6,000,000*l.* for public works loans during the period ending 30th June, 1880. 38 & 39 Vict. c. 89.

X. For the purpose of loans by the Public Works Loan Commissioners,—

(1.) Any sum or sums, not exceeding in the whole the sum of six million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875; and

(*b*) This section has merely a local application.

Appndx.

(2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the thirtieth day of June, one thousand eight hundred and eighty, or on any earlier day at which a further Act granting money for the purpose of the said loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorized by this section to be issued out of the Consolidated Fund, or any part of that sum (*a*).

38 & 39 Vict. c. 89.

THE ARTIZANS DWELLINGS ACT (1868) AMENDMENT ACT (1879) AMENDMENT.

(43 Vict. Cap. 8) (*b*).

An Act to explain and amend the twenty-second section of the Artizans and Labourers Dwellings Act, 1868, *Amendment Act*, 1879.

[19th March, 1880.]

42 & 43 Vict. c. 64.

Whereas an Act entitled the Artizans and Labourers Dwellings Act, 1868, Amendment Act, 1879, was passed in the last session of Parliament:

And whereas in the twenty-second section of the said Act the words "in the form set forth in the Third Schedule hereto" were inserted by mistake:

Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said section shall be construed and read as if the said words had not been inserted therein.

Amendment of section 22 of recited Act.

THE ALKALI, &c., WORKS REGULATION ACT, 1881.

(44 & 45 Vict. Cap. 37.)

An Act to consolidate the Alkali Acts, 1863 *and* 1874, *and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved.* [11th August, 1881.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(*a*) The remainder of this Act applies to Ireland only.

(*b*) See 42 & 43 Vict. c. 64, *ante*, p. 944.

Preliminary.

I. This Act may be cited as the Alkali, &c., Works Regulation Act, 1881. Appndx.

Short title.

II. This Act shall (save as otherwise provided in this Act) come into operation on the first day of January, 1882, which date is hereinafter referred to as the commencement of this Act. Commencement of Act.

Part I.

Alkali Works and Alkali Waste.

III. Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector— Condensation of muriatic and other acid gases in alkali works.

(*a.*) Of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gasses, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(*b.*) Of the acid gases of sulphur and nitrogen which are evolved in the process of manufacturing sulphuric acid or sulphates in the work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases, escaping into the atmosphere, does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner (*c*) of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

IV. In addition to the condensation of acid gases as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section. Best practicable means to be used for preventing discharge of noxious and offensive gases in alkali works.

If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

(*c*) See the definition in section 29, *post.*

Appndx.

Acid drainage and alkali waste to be kept apart.

V. Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any subsequent offence has continued.

On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or watercourse into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876 (*a*); and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act (*b*).

39 & 40 Vict. c. 75.

Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or discharge of alkali waste.

VI. Alkali waste shall not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom.

Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Prevention of nuisance from alkali waste already deposited or discharged.

VII. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of a nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof he shall be liable to a fine not exceeding twenty pounds, and if he does not proceed to use such means within such time as shall be limited by the court inflicting such fine then he shall be liable to a further penalty of five pounds per day from the expiration of the time so limited.

(*a*) See *ante*, pp. 30, 47.

(*b*) See sections 16, 32, of that Act, *ante*. Reference should be made to *St. Helens Chemical Works* v. *St. Helens Corporation*, *ante*, p. 94, where owners were held liable for a nuisance caused by the evolution of noxious gases in a sewer consequent upon the discharge into the sewer of muriatic acid and sulphur.

Part II.

Sulphuric Acid Works and other specified Works.

Appndx.

Condensation of acid gases in sulphuric acid works.

VIII. Every sulphuric acid work as defined in the schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination or from that of some other inspector, of the acid gases of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in such work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any sulphuric acid work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

Best practicable means to be used for preventing discharge of noxious and offensive gases in scheduled works.

IX. The owner of any work specified in the schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification, in the case of sulphuric acid works, that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any subsequent offence has continued.

Provisional order to prevent discharge of certain gases in salt works.

X. An inspector may from time to time inquire whether, in any works in which the extraction of salt from brine is carried on, hereinafter called the works, means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of sulphurous and muriatic acid gases evolved in such works, or either of such gases, or for rendering such gases, or either of them, harmless or inoffensive when discharged; also whether in any works in which aluminous deposits are treated for the purpose of making cement, hereinafter called cement works, such means as aforesaid can be adopted with respect to the noxious or offensive gases evolved from such works.

Where it appears to the Local Government Board that such means can be adopted at a reasonable expense the board may from time to time by order require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount or proportion, in the case of salt works, of sulphurous or muriatic acid gas, and in the case of cement works of any noxious or offensive gas, which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they see fit.

Appndx.

An order made under this section shall be provisional only and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be deemed to include an order so confirmed, so far as is consistent with the tenor of that order.

The board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them under this section before any bill for confirming the same is introduced into Parliament.

An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

Part III.

(i.) *Registration of Works.*

Registration of works, and stamp duty.

XI.—(1.) An alkali work or a work to which Part II. of this Act applies shall not, after the first day of April, 1882, be carried on unless it is certified to be registered.

(2.) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.

(3.) The owner of an alkali work or of a work required to be registered shall in the month of January or February in every year apply for a certificate of registration in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued, and shall be in force for one year from the first day of April following the said application.

(4.) The owner of an alkali work or of a work required to be registered erected after the commencement of this Act shall before commencing any manufacture or process in such work apply for such certificate in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued as soon as may be, and shall be in force until the next first day of April.

There shall be charged in respect of every such certificate, in the case of an alkali work, the duty of five pounds; and in the case of a work required to be registered, not being an alkali work, the duty of three pounds.

(5.) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to an inspector, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(6.) The owner of a work which is carried on in contravention of this section shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding five pounds for every day during which it is so carried on.

XII. An alkali work or a scheduled work, erected after the commencement of this Act, or which has been closed for a period of twelve months, shall not be registered under this Act unless the work is furnished with such appliances as at the time of registration appear to the chief inspector after his own examination, or that of an inspector, or in case of difference to the central authority, to be necessary in order to enable the work to be carried on in accordance with such requirements of this Act as for the time being apply to such work. Certificate of inspector prior to registration of new works.

XIII. The duties charged in respect of a certificate of registration under this Act shall be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and for the purpose of the said duties the Commissioners of Inland Revenue shall issue stamped forms of certificate, and the commissioners may issue the same at any time after the passing of this Act. Supplemental provisions as to duties.

(ii.) *Inspection.*

XIV. The Local Government Board (*a*) shall at any time after the passing of this Act, and from time to time, with the approval of the Commissioners of Her Majesty's Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they from time to time fix) as the board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors. Appointment of inspectors.

Notice of the appointment of every such inspector shall be published in the *London Gazette*, and a copy of the *Gazette* shall be evidence of the appointment.

The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Commissioners of Her Majesty's Treasury may sanction, shall be paid out of moneys provided by Parliament.

The inspector appointed before the commencement of this Act under the Alkali Acts, 1863 and 1874, shall be deemed to be the first chief inspector under this Act, and the sub-inspectors appointed under those Acts before the commencement of this Act shall be deemed to be inspectors appointed under this Act. A person holding the office of chief inspector (other than the person at the commencement of this Act discharging the duties thereof) or inspector shall not be employed in any other work except by or with the sanction of the authority appointing him to such office. 26 & 27 Vict. c. 124. 37 & 38 Vict. c. 43.

XV. A person who acts or practices as a land agent (*b*), or who is engaged or interested directly or indirectly in any work to which this Disqualification of certain persons

(*a*) The inspectors were appointed by the Board of Trade under the former Acts, until the passing of 35 & 36 Vict. c. 79, s. 35, re-enacted in the Public Health Act, 1875, Schedule V. *ante*, p. 444.

(*b*) This is a term of no very definite meaning. A person who manages the landed estate of another is a *land agent:* such a person is doubtless referred to here, though there are other persons called land agents.

Appndx. for inspectors.

Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act, or who is employed in or about or in connexion with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act.

Powers of inspectors.

XVI. For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter and inspect any work to which this Act applies, and examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with; and may enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste; and generally may inquire into all matters and processes which tend to show compliance or noncompliance with such of the provisions of this Act as are for the time being applicable to the work or place entered, or which seem necessary or proper for the execution of his duties under this Act.

An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any experiments he may think proper for the purpose of the execution of his duties under this Act.

Facilities for inspection.

XVII. The owner of any work to which this Act applies shall, on the demand of the chief inspector, furnish him within a reasonable time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on.

The owner of every such work and his agents shall render to every inspector all necessary facilities for an entry, inspection, examination, and testing in pursuance of this Act.

Every owner of a work in which such facilites are not afforded to an inspector as are required by this Act, or in which (*a*) an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds.

Annual report to Local Government Board.

XVIII. The chief inspector shall on or before the first day of March in every year make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, who shall furnish him with a detailed account of the number of inspec-

(*a*) This seems to render an owner liable for an obstruction caused by any person in his employment. See, however, section 25, *post*.

tions of works in their districts, and the recorded escapes of acid gases from such works during the preceding year, and a copy of such report shall be laid before both Houses of Parliament. Appndx.

Additional inspector on application of sanitary authorities

XIX. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, out of any rate or rates leviable by such authority or authorities (which undertaking such authority or authorities are hereby authorized to give and to carry into effect), the Local Government Board may (if they see fit) from time to time, with the sanction of the Commissioners of Her Majesty's Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and the same regulations and liabilities as other inspectors under this Act.

The proportion of salary or remuneration aforesaid shall be paid at the prescribed time or times into Her Majesty's Exchequer, and in the case of failure on the part of any sanitary authority to pay any sum payable by them in pursuance of this section, the same may be recovered by action in any court of competent jurisdiction.

(iii.) *Special Rules.*

Power of owners of works to make special rules.

XX. The owner of an alkali work or of a scheduled work may, with the sanction of the central authority (*b*), make, and when made, alter add to and repeal special rules for the guidance of his workmen who are employed in any process causing the evolution of any noxious or offensive gas, or whose duty it is to attend to the apparatus used in the condensation of that gas, or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless and inoffensive when discharged, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

Any fine incurred under this Act in respect of an offence against a special rule may be recovered summarily.

(iv.) *Procedure.*

Provision as to calculation of acid.

XXI. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases, shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

(*b*) *i. e.*, the Local Government Board; see section 29, *post.*

Appndx.

Recovery of fines for offences against Act in county court.

XXII. The following regulations are hereby enacted with respect to the recovery of fines for offences other than offences against a special rule:

Every such fine (*a*) shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed:

The action shall be brought, with the sanction of the central authority, by the chief inspector, or by such other inspector as the Local Government Board may in any particular case direct, within three months after the commission of the offence (*b*), and for the purposes of such action the fine shall be deemed to be a debt due to such inspector (*c*):

The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorized under this Act to bring the action, until the contrary is proved by the defendant (*d*):

The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

If either party in any action under this Act feels aggrieved by the decision of the court in point of law, or on the merits (*e*) or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice:

The appeal shall be in the form of a special case to be agreed on by both parties or their solicitors, and if they cannot agree, to be settled by the judge of the county court on the application of the parties or their solicitors:

The court of appeal may draw any inference from the facts stated in the case that a jury might draw from the facts stated by witnesses:

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and appeals from decisions of

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(*a*) The word fine is hardly applicable to a sum which is to be recovered by civil proceedings. It is equivalent to penalty. This Act provides for maximum and not fixed penalties, but does not point out who is to decide as to the proper amount. The fine is to be claimed as a debt, and it seems that the inspector should sue for the maximum amount, the judge of the court giving judgment for the amount he shall deem sufficient.

(*b*) The offence may be continuing, or there may be a separate offence for every day it is continued. See, for example, section 5, *ante*, and section 23, *post*; and *Reg.* v. *Waterhouse*, *ante*, p. 104.

(*c*) Section 24, *post*, provides for the application of the penalty when recovered. There is no provision with reference to the costs of the inspector, but as he will be acting officially, it is to be presumed that the costs, in so far as they are not recovered from the defendant, will be paid by the Treasury.

(*d*) Hence it will not be necessary for the inspector to produce the *Gazette*, which, according to section 14, *ante*, will be evidence of his appointment.

(*e*) This appears to signify upon the effect of the facts proved in evidence, but the term is indefinite, and may perhaps be considered to be applicable to the amount of the penalty imposed.

the county court judges, and to the conditions of such appeals, and to the power of the High Court of Justice, or any division or judge thereof, on such appeals, shall apply to an action for a fine under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court:

Within the city of London and the liberties thereof the sheriff's court established by a local Act passed in the eleventh year of the reign of Her present Majesty, chapter seventy-one, intituled An Act for the more easy recovery of small debts and demands within the city of London and the liberties thereof, shall be deemed to be the county court for the purposes of this Act:

In Scotland the court of the sheriff or sheriff substitute of the county in which the offence is committed shall be the county court for the purposes of this Act, and may award costs to either party, and may sentence the offender to imprisonment for any period not exceeding six months, unless the fine and costs be previously paid; and any decision or sentence of such sheriff or sheriff substitute shall be subject to review and appeal according to law:

In Ireland such fines as are in this section mentioned may be recovered by civil bill, in the manner and with the appeal directed by an Act passed in the fourteenth and fifteenth years of Her present Majesty, chapter fifty-seven, or any Act or Acts amending the law relating to civil bills.

Further provisions as to recovery of fines in county court.

XXIII. In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule—

(*a.*) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and

(*b.*) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

Not less than twenty-one days before the hearing of any proceeding against an owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognizance of the matter.

A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

Appndx.

Application of fines.

XXIV. All fines recovered under this Act, except in respect of offences against a special rule (*a*), shall be paid into the receipt of Her Majesty's Exchequer.

Discharge of owner on conviction of actual offender.

XXV. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent servant or workman, whom he shall charge by name as the actual offender, without his knowledge consent or connivance; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case in which it is made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge consent or connivance of the owner, and in contravention of his orders.

Service of notices.

XXVI. Any notice summons or other document under this Act, may be in writing or print, or partly in writing and partly in print.

Any notice summons or document required or authorized for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by delivering the same to the owner, or at his residence or works; it may also be served or sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and the same shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner (*b*).

Complaint by sanitary authority in cases of nuisance.

XXVII. Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without the district) to which this Act applies is carried on in contravention of this Act, or that any

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(*a*) Fines in respect of offences against a special rule are recoverable summarily (section 20, *ante*). The fines so recovered not being appropriated, must be paid to the county or borough treasurer under 11 & 12 Vict. c. 43, s. 31, and 14 & 15 Vict. c. 55, s. 11.

(*b*) The provision somewhat resembles that in section 267 of the Public Health Act, 1875, s. 314. See the notes to that section.

alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority (*c*), who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority (*d*).

The expression "sanitary authority" in this section includes as regards the metropolis, except the city of London, any vestry or district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the city of London shall mean the Commissioners of Sewers of the said city.

18 & 19 Vict. c. 120.

38 & 39 Vict. c. 55.

Actions in case of contributory nuisance.

XXVIII. Where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured by such nuisance may proceed against any one or more of such persons, and may recover damages from each person made a defendant in proportion to the extent of the contribution of such defendant to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section shall not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

(v.) *Definitions; Repeal; Saving.*

Interpretation of terms.

XXIX. In this Act, unless the context otherwise requires—

"Alkali work" means every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and for the purpose of this definition the formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda.

"Noxious or offensive gas" does not include sulphurous acid arising from the combustion of coal.

"Owner" means the lessee, occupier, or any other person carrying on any work to which this Act applies.

"Prescribed" means prescribed from time to time by the Local Government Board, and "the Local Government Board" means the Local Government Board established by the Local Government Board Act, 1871.

34 & 35 Vict. c. 70.

"Central authority" means as regards England the said Local Govern-

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(*c*) That is, to the Local Government Board; see section 29, *post*.

(*d*) That is, out of the general district fund in the case of an urban authority. Such expenses when payable by a rural authority are general expenses; see section 229, *ante*, p. 263.

Appndx.

ment Board, as regards Ireland the Local Government Board for Ireland, and as regards Scotland one of Her Majesty's principal Secretaries of State.

"Sanitary authority" means any local authority entrusted with the execution of the Public Health Act.

38 & 39 Vict. c. 55. 30 & 31 Vict. c. 101. 41 & 42 Vict. c. 52.

"The Public Health Act" means, as regards England, the Public Health Act, 1875; and as regards Scotland, the Public Health (Scotland) Act, 1867; and as regards Ireland, the Public Health (Ireland) Act, 1878.

"Person" includes a corporation.

Repeal of 26 & 27 Vict. c. 124, 31 & 32 Vict. c. 36, and 37 & 38 Vict. c. 43.

XXX. The following Acts, that is to say—

The Alkali Act, 1863 (26 & 27 Vict. c. 124),

The Act to make perpetual the Alkali Act, 1863 (31 & 32 Vict. c. 36), and

The Alkali Act, 1874 (37 & 38 Vict. c. 43),

are hereby repealed without prejudice to anything done or suffered before the commencement of this Act, or to the recovery of any penalty incurred before or proceeding pending at the commencement of this Act; and any such penalty or proceeding may be recovered or continued as if this Act had not been passed.

Saving as to general law.

XXXI. Nothing in this Act shall legalize any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action indictment or otherwise, to which he would have been entitled if this Act had not passed.

SCHEDULE.

List of Works.

(1.) Sulphuric acid works, that is to say, any works in which the manufacture of sulphuric acid is carried on (not being alkali works within the meaning of the foregoing Act, and not being works in which the manufacture of sulphuric acid is carried on in conjunction with the extraction of copper or other metals from ore);

(2.) Chemical manure works, that is to say, any works in which the manufacture of chemical manure is carried on;

(3.) Gas liquor works, that is to say, any works in which gas liquor is used in any manufacturing process;

(4.) Nitric acid works, that is to say, any works in which the manufacture of nitric acid is carried on;

(5.) Sulphate of ammonia works and muriate of ammonia works, that is to say, any works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on; and

(6.) Chlorine works or works in which chlorine, bleaching powder, or bleaching liquor is made.

THE PUBLIC WORKS LOANS ACT, 1881.

(44 & 45 Vict. Cap. 38) (*a*).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners.

[22nd August, 1881.]

Appndx.

Whereas it is expedient to grant money for the purpose of loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland:

And whereas it is expedient to authorize the remission of certain sums due in respect of loans granted by the said commissioners:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited as the Public Works Loans Act, 1881. Short title.

Part I.

Relates to the Grant of Money for Public Works Loan Commissioners during the period ending 30th June, 1882.

Part II.

Relates only to the Grant of Money for Public Works Commissioners, Ireland, during the period ending 30th June, 1882.

Part III.

The early portion relates only to the Remission, &c., of Loans in various cases.

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(*a*) See 38 & 39 Vict. c. 89, *ante*, p. 828.

Amendment of Acts.

Appndx.

Amendment of 38 & 39 Vict. c. 89, s. 22, as to rate of interest for loan.

VII. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875 (*a*), or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair, improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Expenses of ascertaining (under 38 & 39 Vict. c. 89, s. 36) that loans advanced by the Public Works Loan Commissioners have been properly applied.

VIII. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six (*b*) of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Any such order may contain directions as to the parties by whom, and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of the High Court of Session in either division of the Inner House thereof in Scotland.

Application of surplus balances of loans made by the Public Works Loan Commissioners.

IX. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorized to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six (*b*) of the Public Works Loans Act, 1875, and section four (*c*) of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied, shall be deemed to be the purpose for which that portion of the loan was advanced.

41 Vict. c. 18.

X. (*d*).

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(*a*) See section 22, *ante*, p. 835.
(*b*) See the section, *ante*, p. 841.
(*c*) See the section, *ante*, p. 912.
(*d*) This section relates to local matters only; and the remaining sections of the Act apply only to Ireland.

THE PETROLEUM (HAWKERS) ACT, 1881.

(44 & 45 VICT. CAP. 67) (*e*).

An Act to regulate the hawking of Petroleum and other substances of a like nature. [27th August, 1881.]

Appndx.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power to hawk petroleum. 34 & 35 Vict. c. 105.

I. Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants (*f*).

Regulations for hawking petroleum.

II. With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed:

(1.) The amount of petroleum conveyed at one time in any one carriage shall not exceed twenty gallons:

(2.) The petroleum shall be conveyed in a closed vessel so constructed as to be free from leakage:

(3.) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture:

(4.) Any fire or light or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed:

(5.) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise:

(6.) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer:

(7.) The petroleum shall be stored in some premises licensed for keeping of petroleum and in accordance with the license for such premises both every night and also when the petroleum is not in the course of being hawked:

(8.) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorized

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(*e*) See 34 & 35 Vict. c. 105, *ante*, p. 769, and 42 & 43 Vict. c. 47, *ante*, p. 937. As to keeping petroleum in a cart before the passing of this Act, see *Coleman* v. *Goldsmith*, 43 J. P. 718.

(*f*) A hawker's license will be necessary. See 29 & 30 Vict. c. 64, s. 111. As to what constitutes hawking petroleum, see section 6, *post*.

Appndx.

persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking:

(9.) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum:

In the event of any contravention of this section with reference to any petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited, and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Provided that—

(1.) Where some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee:

(2.) Where the licensee is charged with a contravention of this section, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if the licensee proves to the satisfaction of the court that he had used due diligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty.

Any petroleum other than that to which the Petroleum Act, 1871, applies, while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall for the purposes of this section be deemed to be petroleum to which the Petroleum Act, 1871, applies.

Modification of conditions of license under 34 & 35 Vict. c. 105.

III. Any conditions annexed to a license granted in pursuance of the Petroleum Act, 1871, either before or after the passing of this Act, shall, so far as they are inconsistent with this Act, be void, but save as aforesaid nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any license granted thereunder.

Power of constable as to prevention of offences.

IV. Where a constable or any officer authorized by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act, and section thirteen of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section.

V. Nothing in this Act contained shall extend to authorize the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden. Saving of rights of municipal boroughs.

VI. For the purposes of this Act— Definitions.

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner the same may be drawn or propelled; and

A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden.

VII. This Act may be cited as the Petroleum (Hawkers) Act, 1881. Short title and construction of Act. 34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47.

This Act shall be construed as one with the Petroleum Acts, 1871 and 1879, and together with those Acts may be cited as the Petroleum Acts, 1871 to 1881.

THE BATHS AND WASH-HOUSES ACT, 1872.

(45 & 46 Vict. Cap. 30) (*a*).

An Act to amend the Baths and Wash-houses Acts. [24th July, 1882.]

Whereas it is desirable to give increased facilities to local authorities for providing baths and wash-houses within easy and convenient reach:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as the Baths and Wash-houses Act, 1882, and shall be read as one with the Act of the ninth and tenth years of the reign of Her present Majesty, chapter seventy-four, in this Act called "the principal Act." Short title.

II. Section twenty-seven of the principal Act (*b*) shall be amended by the addition of the words "or in the immediate neighbourhood of such borough or parish" to the words "in any such borough or parish" wherever such last-mentioned words occur in the said section. Amendment of 9 & 10 Vict. c. 74, s. 27.

(*a*) See 9 & 10 Vict. c. 74, *ante*, p. 554; 10 & 11 Vict. c. 61, *ante*, p. 614; 41 Vict. c. 14, *ante*, p. 898.

(*b*) *Ante*, p. 561.

Appndx.

Amendment of 9 & 10 Vict. c. 74, s. 24.

III. The power conferred by section twenty-four of the principal Act (*a*) to purchase or rent lands for the purposes of that Act shall extend to lands in the immediate neighbourhood of such borough or parish as is therein referred to.

THE ARTIZANS' DWELLINGS ACT, 1882.

(45 & 46 Vict. Cap. 54) (*b*).

An Act to amend the Artizans and Labourers Dwellings Acts.

[18th August, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

I. This Act may be cited as the Artizans Dwellings Act, 1882.

Part I.

Artizans and Labourers Dwellings Improvement Acts, 1875 *and* 1879.

Construction of Part I. of Act. 38 & 39 Vict. c. 36. 42 & 43 Vict. c. 63.

II. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879, and those Acts together with this part of this Act may be cited together as the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882.

Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.

III. Whereas by section five of the Artizans and Labourers Dwellings Improvement Act, 1875 (*c*), it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas by section four of the Artizans and Labourers Dwellings

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(*a*) *Ante*, p. 560.
(*b*) See 38 & 39 Vict. c. 36, and 42 & 43 Vict. c. 63, *ante*.
(*c*) *Ante*, p. 786.

Improvement Act, 1879 (*d*), it is provided that the above requirements of section five of the Artizans and Labourers Dwellings Improvement Act, 1875, may, if the confirming authority so authorize, be complied with by the provision of equally convenient accommodation at some place other than within the area or the immediate vicinity of the area comprised in such scheme : Appndx.

And whereas it is expedient to make further provision respecting such accommodation : Be it therefore enacted as follows :

Where an improvement scheme of a local authority comprises an area situate in the metropolis or the city of London, the confirming authority shall, without prejudice to the powers conferred on it by the said fourth section of the Artizans and Labourers Dwellings Improvement Act, 1879, be authorized (on the application of the local authority, and on a report being made by the officer conducting the local inquiry directed by the confirming authority that it is expedient having regard to the special circumstances of the locality and to the number of artizans and others belonging to the labouring class dwelling within the area, and being employed within a mile thereof, that a modification should be made) to dispense in the provisional order authorizing the scheme altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to such extent as he may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced, and where any such improvement scheme comprises an area situate elsewhere than in the metropolis or the city of London, it shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working class displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

The twelfth section of the Artizans and Labourers Dwellings Improvement Act, 1875, and any other enactment relating to the requirement of the said Act as to the accommodation of the working classes, shall be construed with reference and subject to the modifications made by this Act.

The power by this section given to the confirming authority to dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to an extent not exceeding one half of the persons so displaced may (in the case of any scheme which has, before the passing of this Act, been authorized by a confirming Act) upon the application of the local authority be exercised by the confirming authority by an order made at any time within twelve months after the passing of this Act.

Amendment of 38 & 39 Vict. c. 36, s. 19, as to the valuation of land.

IV. Whereas it is expedient to amend section nineteen of the Artizans and Labourers Dwellings Improvement Act, 1875 : Be it therefore enacted as follows :

In the estimate of the value of the said lands or interests in the said

(*d*) *Ante*, p. 942.

Appndx.

section in that behalf mentioned any addition to or improvement of the property made after the date of the publication of an advertisement in pursuance of section six of the said Act stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands, and the words "and all circumstances affecting such value" in the said section are hereby repealed (*a*).

Amendment of schedule to 38 & 39 Vict. c. 36.

V. There shall be repealed so much of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, as is comprised under the heading "Proceedings on Arbitration," that is to say, articles numbered (5) to (13) both inclusive, and there shall be substituted therefor the articles contained in the schedule hereto; Provided that such repeal shall not affect anything duly done or suffered under any provision hereby repealed.

Limit of area to be dealt with on official representation.

VI. Where an official representation made to the Metropolitan Board of Works in pursuance of the Artizans and Labourers Dwellings Improvement Act, 1875, relates to not more than ten houses, the Metropolitan Board of Works shall not take any proceedings on such representation, but shall direct the officer making the same to report the case to the local authority as defined by the Artizans and Labourers Dwellings Act, 1868 (*b*), and it shall be the duty of the local authority to deal with such case in manner provided by the last-mentioned Act, and the Acts amending the same.

31 & 32 Vict c. 130.

Part II.

Construction of Part II. 31 & 32 Vict. c. 130. 42 & 43 Vict. c. 64.

VII. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Act, 1868 (*b*), and the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879 (*c*), and those Acts and this part of this Act may be cited together as the Artizans Dwellings Acts, 1868 to 1882.

Power to local authority to purchase houses for opening alleys, &c.

VIII. (1.) If in any place to which the Artizans and Labourers Dwellings Act, 1868, applies the officer of health finds that any building, although not in itself unfit for human habitation is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(1) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation; or

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(*a*) See *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78; 49 L. T. (N.S.) 468; 32 W. R. 118.

(*b*) *Ante*, p. 941.

(*c*) *Ante*, p. 941.

(2) It prevents proper measures from being carried into effect for remedying the evils complained of in respect of such other buildings, Appndx.

in any such case the officer of health shall make a report to the local authority in writing of the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building"), stating that in his opinion it is expedient that the obstructive building should be pulled down, and shall deliver the report to the clerk of the local authority.

(2.) The local authority shall refer such report to a surveyor or engineer to report thereon, and to report as to the cost of acquiring the lands on which such obstructive building is erected and of pulling down such building.

(3.) The local authority shall take into consideration the reports of the officer of health and of the surveyor, and if they decide to adopt such reports shall cause copies to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order in writing signed by their clerk either allowing the objections or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of the local authority under the Artizans and Labourers Dwellings Act, 1868.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and is not appealed against, or if appealed against is confirmed, the local authority shall be deemed to be authorized to purchase the lands on which the obstructive building is erected in like manner as if they had been authorized by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this Act (subject nevertheless to the provisions of this Act), and for the purpose of those provisions this Act shall be deemed to be the special Act and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation. 8 & 9 Vict. c. 18.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided by section seven of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, as amended by this part of this Act.

(7.) Where the owner retains the site or any part thereof section twenty-three of the Artizans and Labourers Dwellings Act, 1868, shall apply to such site.

Appndx.

(8.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the evils caused by such obstructive building, and may, with the assent of the confirming authority and upon such terms as such authority think expedient, permit such portion of the site to be sold as is not required for the purpose of carrying this section into effect.

Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Act, 1875, relating to private improvement expenses and to private improvement rates (*a*) shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act, and the said provisions shall be deemed to extend to the city of London and to the metropolis, and in the construction of the said provisions, as respects the city of London the Commissioners of Sewers, and as respects the metropolis the Metropolitan Board of Works, shall be deemed to be the urban authority.

38 & 39 Vict. c. 55.

If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Consolidation Act, 1845, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

Amendment of section 7 of 42 & 43 Vict. c. 64.

IX. Section seven of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, shall be construed as if the words "and all circumstances affecting such value" were omitted therefrom.

Expenses of local authority.

X. The expenses of the local authority under this part of this Act shall be defrayed in like manner as expenses incurred in pursuance of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879.

Amendment of 42 & 43 Vict. c. 64, s. 12, as to enforcement of Act by Metropolitan Board of Works.

XI. Whereas by section twelve of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, it is provided that in the event of a local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the Metropolitan Board of Works requiring such local authority to put in force the provisions of the said Act in respect of any premises described in such notice, the Metropolitan Board of Works shall have the powers therein mentioned, and it is expedient to amend the said section: Be it therefore enacted as follows:

Where an officer of health in pursuance of the Artizans and Labourers

(*a*) Sections 213, 214, *ante*, pp. 248, 249.

Dwellings Act, 1868, has reported any premises as unfit for human habitation, or in pursuance of this part of this Act has reported that the pulling down of any obstructive building would be expedient, the board of guardians in whose union or parish, or the owner of any property in the neighbourhood of which such premises or buildings are situate, may complain to the Metropolitan Board of Works that the local authority have failed to put in force the provisions of the said Acts in respect of such premises or buildings, and the Metropolitan Board of Works may, if they think it expedient so to do, thereupon proceed under section twelve of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and that section shall apply as if it were enacted in this part of this Act and in terms made applicable to the duties of local authorities under this part of this Act. Appndx.

SCHEDULE.

Amendment of Schedule to 38 & 39 Vict. c. 36.

(1.) In lieu of articles eight to thirteen (both inclusive) of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, the following articles shall be substituted; that is to say,

Proceedings on Arbitration.

(*a.*) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

"I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875. *A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(*b.*) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

(*c.*) In every case in which compensation is payable under the Artizans and Labourers Dwellings Improvement Act, 1875, by the local authority to any claimant, and which compensation has not been

Appndx.

made the subject of agreement (in this Act referred to as "a disputed case"), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested (*a*) in each disputed case as may appear before him at a time and place of which notice has been given as in this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(*d.*) The arbitrator shall from time to time give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(*e.*) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(*f.*) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

(*g.*) Any person or local authority dissatisfied with the amount of compensation awarded may, where such amount exceeds one thousand pounds, but not otherwise, appeal in manner provided by article twenty-six of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, and that article shall be construed as if one thousand pounds were therein substituted for five hundred pounds.

(*h.*) The costs, charges, and expenses payable by the local authority under article twenty-eight of the schedule to the Artizans and

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(*a*) See *Carr* v. *Metropolitan Board of Works*, 14 Ch. D. 807; 49 L. J. Ch. 272; 42 L. T. (N.S.) 354.

Labourers Dwellings Improvement Act, 1875, shall not be payable until the amount has been certified by the confirming authority. Appndx.

(*i.*) Notwithstanding anything contained in article twenty-nine of the said schedule, the arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration in any case where he considers that such costs are not properly payable by the local authority.

THE PUBLIC WORKS LOANS ACT, 1882.

(45 & 46 Vict. Cap. 62) (*b*).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners. [18th August, 1882.]

Whereas it is expedient to grant money for the purpose of loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission:

And whereas it is expedient to amend the Acts relating to the said Commissioners, and to make provisions respecting certain sums due in respect of loans granted by the said Commissioners:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited as the Public Works Loans Act, 1882. Short title.

II. This Act may be cited, together with the Public Works Loans Act, 1875, and the Public Works Loans Act, 1879 (*c*), as the Public Works Loans Acts, 1879 to 1882. Citation of Acts. 38 & 39 Vict. c. 89. 42 & 43 Vict. c. 77.

Part I.

Relates to the grant of Money for Public Works Loan Commissioners, during the period ending June 30th, 1883.

(*b*) See 38 & 39 Vict. c. 89, *ante*, p. 828.
(*c*) *Ante*, p. 953.

Part II.

Relates to the grant of Money for Public Works Commissioners, Ireland.

Part III.

Relates to the grant of Money for Irish Land Commission.

Part IV.

Amendment of Acts.

Amendment of 24 & 25 Vict. c. 45, as to provision for loans in provisional order respecting harbours.

VII. Whereas under the General Pier and Harbour Act, 1861, the Board of Trade can make a provisional order, subject to confirmation by Parliament, authorizing the construction of a harbour, pier, or other works within the meaning of the said Act, and authorizing the promoters to raise a loan to the amount specified in the order for the purpose of such harbour, pier, or works, and in many cases where the promoters are a public body difficulties arise in raising such loan on account of the defective security, while the construction of the said harbour, pier, or works is of so great importance to the inhabitants of the town or place where the same are to be constructed that they would be willing to guarantee the loan, if power were given for this purpose, and it is expedient to provide for the conferring of such power by the provisional order: Be it therefore enacted as follows:

(1.) Where a provisional order under the General Pier and Harbour Act, 1861, authorizes any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorize any rating authority as hereinafter defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.

(2.) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed.

Appndx.

(3.) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principal and interest of any money borrowed by the said authority, and for the reimbursement of the fund or rate out of the income of the said works, or otherwise by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.

(4.) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board, or as regards Scotland to the Secretary of State for the Home Department, a statement of such proposal, and if the Local Government Board, or Secretary of State for the Home Department declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section.

In this section,—

The expression "public body" means any rating authority, also any commissioners, or trustees, or other body or person who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works :

The expression "rating authority" means—

(1.) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875 (*a*), and the Acts amending the same ; and 38 & 39 Vict. c. 55.

(2.) As regards Scotland, the town council or commissioners of police of, or other local authority having power to levy assessments in, any royal or parliamentary burgh, or in any populous place the boundaries whereof have been fixed and ascertained under the General Police and Improvement (Scotland) Act, 1862, or under the Act therein recited or under any local Act ; and 25 & 26 Vict. c. 101.

(3.) As regards Ireland, any urban sanitary authority under the Public Health (Ireland) Act, 1878, and the Acts amending the same. 41 & 42 Vict. c. 52.

Account in case of loan on security of rate.

VIII. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall

(*a*) See section 6 of that Act, *ante*, p. 17.

Appndx.

show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made.

Repeal of 38 & 39 Vict. c. 89, s. 13, and 40 & 41 Vict. c. 27, s. 11, as to annual and quarterly statements of accounts required by borrowers.

IX. Section thirteen of the Public Works Loans Act, 1875, and section eleven of the Public Works Loans (Ireland) Act, 1877 (which provided for annual and quarterly statements from borrowers of the amounts which they will probably apply to borrow), are hereby repealed.

X. (*a*).

THE LANDS CLAUSES (UMPIRE) ACT, 1883.

(46 Vict. Cap. 15).

An Act to amend the Lands Clauses Consolidation Act, 1845.
[18th June, 1883.]

8 & 9 Vict. c. 18.

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of section 28 of 8 Vict. c. 18, extending the power of appointment of umpire by Board of Trade.

I. The following words in section twenty-eight of the Lands Clauses Consolidation Act, 1845 (*b*), are hereby repealed, that is to say, "in any case in which a railway company shall be one party to the arbitration, and two justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows:

> 28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Short title.

II. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

(*a*) Relates to Ireland only: and section 11 makes provision with regard to certain local loans.

(*b*) See this section, *ante*, p. 513.

THE PUBLIC WORKS LOANS ACT, 1883.

(46 & 47 Vict. Cap. 42) (*c*).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and to amend the Acts relating to the said Commissioners, and for other purposes.

[25th August, 1883.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : Appndx.

I. This Act may be cited as the Public Works Loans Act, 1883. Short title.

II. The Public Works Loans Act, 1875, the Public Works Loans (Money) Act, 1876, the Public Works Loans Act, 1879, the Public Works Loans Act, 1881, and the Public Works Loans Act, 1882, may be together cited as the Public Works Loans Acts, 1875 to 1882 (*d*). Citation of Acts. 38 & 39 Vict. c. 89. 39 & 40 Vict. c. 31. 42 & 43 Vict. c. 77. 44 & 45 Vict. c. 38. 45 & 46 Vict. c. 62.

Part I.

Grant of Money for Public Works Loan Commissioners.

III. (1.) For the purpose of loans by the Public Works Loan Commissioners,— Grant of 3,000,000*l.* for public works loans.

(*a.*) Any sum or sums, not exceeding in the whole the sum of three million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and

(*b.*) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day at which a further Act granting money for the purpose of the said loans comes into operation.

(*c*) See 38 & 39 Vict. c. 89, *ante*, p. 828.
(*d*) These Acts are all included in the Appendix.

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(2.) The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sums authorized by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

Relates only to the grant of Money for Public Works Commissioners, Ireland.

PART III.

Relates to the grant of Money for Irish Land Commission.

PART IV.

Makes Provision as to certain Loans, and its application is therefore local only. Sections 11—13 *relate to Ireland only.*

THE FACTORY AND WORKSHOP ACT, 1883.

(46 & 47 VICT. CAP. 53) (*a*).

An Act to amend the Law relating to certain Factories and Workshops.
[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as the Factory and Workshop Act, 1883.

White Lead Factories (*b*).

* * * * *

(*a*) See 41 Vict. c. 16, *ante*, p. 901.

(*b*) Sections 2—12 inclusive, relating to white lead factories, do not relate in any way to the powers or duties of local authorities, such factories being, so far as these sections are concerned, under the control of the factory inspectors only. Sections 13 and 14 contain amendments of the Factory Act, 1878, but are not material to the present work.

Bakehouses (*c*).

Appndx.

XV. It shall not be lawful to let or suffer to be occupied as a bakehouse, or to occupy as a bakehouse, any room or place which was not so let or occupied before the first day of June one thousand eight hundred and eighty-three, unless the following regulations are complied with: Regulations for new bakehouses.

(i.) No watercloset, earthcloset, privy, or ashpit shall be within or communicate directly with the bakehouse;

(ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a watercloset;

(iii.) No drain or pipe for carrying off fœcal or sewage matter shall have an opening within the bakehouse.

Any person who lets or suffers to be occupied or who occupies any room or place as a bakehouse in contravention of this section shall be liable, on summary conviction, to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for bakehouse being unfit on sanitary grounds for use as a bakehouse.

XVI. Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a local authority that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction, not exceeding five pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

Enforcement of law as to retail bakehouses by local authorities.

XVII. (1.) As respects every retail bakehouse, the provisions of this part of this Act and of sections three, thirty-three, thirty-four, and thirty-five of the Factory and Workshop Act, 1878 (*d*) (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection, taking legal proceedings and otherwise, as an inspector under the Factory and Workshop Act, 1878.

(*c*) See notes on bakehouses, *ante*, pp. 14, 23.
(*d*) See the Act, *ante*, p. 901.

Appndx.

(2.) If any child, young person, or woman is employed in any retail bakehouse, and the medical officer of the local authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

(3.) An inspector under the Factory and Workshop Act, 1878, shall not, as respects any retail bakehouse, exercise the powers of entry and inspection conferred by that Act, unless he has notice or reasonable cause to believe that a child, young person, or woman is employed herein.

Construction of Act and definitions. 41 & 42 Vict. c. 16.

XVIII. This Act shall be construed as one with the Factory and Workshop Act, 1878; and in this Act, unless the context otherwise requires,—

The expression "white lead factory" includes every factory and workshop in which the manufacture of white lead is carried on:

The expression "retail bakehouse" means any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale but by retail in some shop or place occupied together with such bakehouse:

The expression "local authority" means, as respects the city of London and the liberties thereof, the Commissioners of Sewers; as respects the parishes and districts mentioned in the Schedules A. and B. annexed to the Metropolis Management Act, 1855, and any parish to which the said Act may be extended by Order in Council in manner in the said Act provided, the vestries and district boards elected under the said Act; and as respects any urban sanitary district, the urban sanitary authority, and as respects any rural sanitary district, the rural sanitary authority, within the meaning of the Public Health Act, 1875.

18 & 19 Vict. c. 120.

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THE PUBLIC LIBRARIES ACT, 1884.

(47 & 48 Vict. Cap. 37) (*a*).

An Act to amend the Public Libraries Acts. [28th July, 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power of council, board, &c., to accept parliamentary grant.

I. Whereas doubts have arisen as to whether authorities acting under the Public Libraries Acts, have power to fulfil the conditions required for a parliamentary grant in aid of the establishment of a school of

(*a*) See 18 & 19 Vict. c. 70, *ante*, p. 665; 29 & 30 Vict. c. 114, *ante*, p. 695; 34 & 35 Vict. c. 71, *ante*, p. 768; 40 & 41 Vict. c. 54, *ante*, p. 890.

science and art, and it is expedient to remove such doubts: It is therefore hereby declared and enacted that—

Where any authority acting under the Public Libraries Acts accepts a grant out of moneys provided by Parliament from any committee of the Privy Council on Education towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of any teacher in such school, or towards the furnishing of any such school, such authority shall have power to accept such grant upon the conditions prescribed for the acceptance thereof by the said committee, and to execute such instruments as may be required by the said committee for carrying into effect such conditions, and upon payment of the grant shall, together with their successors, be bound by such conditions and instrument, and have power and be bound to fulfil and observe the same.

Explanation of 18 & 19 Vict. c. 70, s. 18, 18 & 19 Vict. c. 70, s. 9, and 30 & 31 Vict. c. 37, s. 10.

II. Whereas section eighteen of the Public Libraries Act, 1855 (*b*), as regards England, and section nine of the Public Libraries Act (Ireland), 1855, as regards Ireland, provide for the erection of buildings "suitable for public libraries, or museums, or both, or for schools for science or art:"

And whereas section ten of the Public Libraries Act (Scotland), 1867, provides for the erection of buildings "suitable for public libraries, art galleries, or museums, or each respectively," and doubts are entertained as to the meaning of those provisions: Now, therefore, it is hereby declared and enacted that—

Buildings may under the said sections be erected for public libraries, public museums, schools for science, art galleries, and schools for art, or for any one or more of those objects.

Power to establish library, museum, or school for science or art in connexion with any of the others of them.

III. (1.) Where any of the following institutions, namely, a public museum, a public library, a school for science and art, a school for science, a school for art, or an art gallery has been established either before or after the passing of this Act under the Public Libraries Acts, or any of them, there may at any time be established in connexion therewith any other of the said institutions without any further proceedings being taken under the said Acts.

(2.) Section ten of the Public Libraries Amendment Act (England and Scotland), 1866 (*c*), and section seventeen of the Public Libraries Act (Scotland), 1867, are hereby repealed, without prejudice to anything done under those sections.

Definitions.

IV. In this Act,—

The expression "Public Libraries Acts" means as respects England, Scotland, and Ireland respectively, the Acts mentioned in the first second, and third parts respectively of the schedule to this Act.

The expression "authority acting under the Public Libraries Acts" means the council, board, magistrates, or commissioners acting in execution of the said Public Libraries Acts.

(*b*) *Ante*, p. 670.
(*c*) *Ante*, p. 696.

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V. This Act may be cited as the Public Libraries Act, 1884.

Short titles.

The Acts mentioned in the first part of the schedule to this Act may be cited together with this Act as the Public Libraries (England) Acts, 1855 to 1884.

SCHEDULE.

Part I.

Public Libraries (England) Acts.

Session and Chapter.	Title.
18 & 19 Vict. c. 70	The Public Libraries Act, 1855.
29 & 30 Vict. c. 114	The Public Libraries Amendment Act (England and Scotland), 1866.
34 & 35 Vict. c. 71	The Public Libraries Act, 1855, Amendment Act, 1871.
40 & 41 Vict. c. 54	The Public Libraries Amendment Act, 1877.

THE CANAL BOATS ACT, 1884.

(47 & 48 Vict. Cap. 75) (*a*).

An Act to amend the Canal Boats Act, 1877. [14th August, 1884.]

40 & 41 Vict. c. 60.

Whereas it is expedient to amend the Canal Boats Act, 1877, in this Act referred to as the principal Act (*a*):

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Certificate of registry made void by structural alterations.

I. A certificate of registration granted under the principal Act (*b*) shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

(*a*) See 40 & 41 Vict. c. 60, *ante*, p. 891.
(*b*) See 40 & 41 Vict. c. 60, s. 3, *ante*, p. 892.

Penalty for contravention of regulations under Canal Boats Acts.

II. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act (*c*) or this Act (*d*), and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

Enforcement of Act by registration and sanitary authority, and report to be made.

III. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

Inquiries and reports by Local Government Board.

IV. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the observance of the regulations made by them thereunder; and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*e*), and may enter any canal boat at any time by day (*f*), and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

Power to make regulations as to school certificates, &c.

V. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

(*c*) See 40 & 41 Vict. c. 60, s. 2, *ante*, p. 892.
(*d*) See section 5, *post*.
(*e*) See *ante*, p. 347.
(*f*) See *post*, section 9.

Appndx.

Annual report by Education Department.

VI. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct Her Majesty's Inspector of Schools to communicate with the School Boards and School Attendance Committees in their districts.

Lettering and numbering of canal boats.

VII. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act (*a*), unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be.

Application of fines.

VIII. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or person authorized by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding.

Definition of term "by day."

IX. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night.

Amendment of definition of canal boat.

X. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessel or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or canal boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly (*b*).

Short title and construction of Act.

XI. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884.

(*a*) *Ante*, p. 892.

(*b*) This section amends the definition of canal boat in 40 & 41 Vict. c. 60, s. 14, *ante*, p. 896.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 Vict. Cap. 70) (*c*).

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections. [14th August, 1884.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,) **Appndx.**

I. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. Short title.

Corrupt Practices.

II. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation (*d*). Definition and punishment of corrupt practice at municipal election.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election (*e*).

(*c*) This statute applies to elections of local boards and improvement commissioners; see section 36, *post*. It is, therefore, set out here, together with Part IV. of the Municipal Corporations Act, 1882, which by section 36 is also applied to these elections. The notes to these Acts of course have reference only to the application of the Acts to elections of sanitary bodies, such as local boards and improvement commissioners.

(*d*) This provision takes the place of a repealed clause in section 77 of the Municipal Corporations Act. The offence of aiding, &c., the commission of the offence of personation is new.

(*e*) By the Corrupt Practices Act, 1883 (45 & 46 Vict. c. 50, s. 6), corrupt practices other than personation or aiding, &c., in the commission of personation, are declared to be misdemeanors, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding 200*l*. A person who commits the offence of personation or of aiding, &c., the commission of that offence, is guilty of felony, and liable on conviction to be imprisoned, with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practices

Appndx.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

III. (1.) Where upon the trial of an election petition (*a*) respecting a municipal election (*b*) for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882 (*c*), that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office (*d*) in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice (*e*).

(2.) Upon the trial of an election petition (*a*) respecting a municipal election (*b*) for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his

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shall not be capable for a period of seven years from the date of his conviction (*a*) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office (see *infra*); or (*b*) of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction. By section 64, the expression "public office" means any office under the Crown or under the charter of a city or municipal borough, or under the Acts relating to municipal corporations, or to the poor law or under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), or under the Public Health Act, 1875 (38 & 39 Vict. c. 55), or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly.

The expression "judicial office" includes the office of justice of the peace and revising barrister.

(*a*) As to election petitions in respect of corrupt practices, see the Municipal Corporations Act, 1882, s. 87, *post*; and in respect of illegal practices, see section 25 of this Act, *post*. For the application of these sections to elections of local boards and improvement commissioners, see section 36, *post*.

(*b*) This means, for the purposes of this work, the election of local boards and improvement commissioners. See section 36, *post*.

(*c*) *Post*.

(*d*) This means an office mentioned in Schedule I. See section 36, *post*.

(*e*) These incapacities are set forth in note (*e*), *supra*.

agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office (*f*) in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

Certain expenditure to be illegal actice.

IV. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a.*) On account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise (*g*); or

(*b.*) To an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(*c.*) On account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward (*h*), and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election (*i*), the person making such payment or contract shall be guilty of an illegal practice, and any person (*k*) receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section (*l*).

(*f*) This means an office mentioned in Schedule I. See section 36, *post*.

(*g*) As the poll at the election of a local board is taken by means of voting papers, this clause does not apply to such an election. Section 36, *post*.

(*h*) In applying this clause to elections of sanitary authorities, the words *borough* or *ward* must be read to mean *local government district* or *ward of such district*, or *Improvement Act district* or *ward of such district*. Section 36 (*a*), *post*.

(*i*) See note (*b*), *ante*, p. 994.

(*k*) The word *person* here is presumed to mean elector in cases falling within clause (*b*), as it does not appear to be illegal to make payments such as those mentioned in that clause to any person other than an elector.

(*l*) This proviso qualifies the provisions of clause (*b*).

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Expense in excess of maximum to be illegal practice.

V. (1.) Subject to such exception as may be allowed in pursuance of this Act (*a*), no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor (*b*) a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward (*c*) exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.

(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates (*d*) at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third (*e*).

(4.) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election (*f*): provided that—

(*a.*) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an

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(*a*) See sections 19, 20, *post*. Observe that this section does not apply to elections of local boards or improvement commissioners. See section 37, *post*.

(*b*) *i. e.* member of a local board or improvement commissioner. See section 36, *post*.

(*c*) See note (*h*), *ante*, p. 995.

(*d*) Joint candidates are described in the next sub-section.

(*e*) Hence, if there are fewer than 500 electors the maximum expense for each of two joint candidates will be 18*l.* 15*s.*, and for each of three or more joint candidates 16*l.* 13*s.* 4*d.*

(*f*) Note the use of the word *or*. If any of these acts are done by two candidates jointly, they will become joint candidates subject to the provisos in the text.

exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses (*g*).

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

VI. (1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice (*h*).

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent (*i*).

Punishment on conviction of illegal practice.

VII. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office (*k*) within the meaning of this Act) held for or within the borough (*l*) in which the illegal practice has been committed.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

VIII. (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882 (*m*), and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (*n*) in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office (*o*) in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such

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(*g*) See sections 19, 20, *post*.

(*h*) As to the persons prohibited from voting by this Act, see sections 13, 22, 23, and Schedule III., Part II., *post*.

(*i*) But *quære*, if the illegal practice has been committed by his agents? It would appear from section 8, sub-section (2), *post*, that the election would be avoided in that event.

(*k*) As to what is a public office, see note (*e*), *ante*, p. 994.

(*l*) See note (*h*), *ante*, p. 995.

(*m*) This part of the Municipal Corporations Act, 1882, is set out, *post*.

(*n*) See notes, *ante*, p. 994.

(*o*) See note (*d*), *ante*, p. 994.

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candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (*a*).

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

IX. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception (*b*), such person shall be guilty of illegal payment.

Employment of hackney carriages, or of carriages and horses kept for hire.

X. (*c*) (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt withdrawal from a candidature.

XI. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election (*d*), in consideration of any payment or promise of payment (*e*), shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

Certain expenditure to be illegal payment.

XII. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(*a*) These incapacities are stated in section 7, *ante*.

(*b*) See sections 19, 20, *post*.

(*c*) This section does not apply to elections of local boards or improvement commissioners. See section 36 (*g*), *post*, and note (*g*), *ante*, p. 995.

(*d*) See note (*b*) to section 3, *ante*.

(*e*) Note that the consideration must be payment or promise of payment. Withdrawal for other considerations is not within this section. But *quære* whether *payment* includes valuable consideration other than the payment of money.

(2.) Subject to such exception as may be allowed in pursuance of this Act (*f*), if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law (*g*).

Certain employment to be illegal.

XIII. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(*a.*) A number of persons may be employed, not exceeding two for a borough or ward (*h*), and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(*b.*) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business (*i*).

(2.) Subject to such exception as may be allowed in pursuance of this Act (*f*), if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act (*k*).

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

Name and address of printer on placards.

XIV. Every bill, placard, or poster having reference to a municipal election (*l*) shall bear upon the face thereof the name and address of the printer and publisher thereof: and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Saving for creditors.

XV. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring

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(*f*) See sections 19, 20, *post.*

(*g*) Note that ignorance of the law will not be an excuse for the party paying.

(*h*) See note (*h*) to section 4, *ante.*

(*i*) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employés of such persons are not to be deemed to be employed within the meaning of this section.

(*k*) See note (*g*) to section 12, *ante.*

(*l*) See note (*b*) to section 3, *ante.*

Apndx. of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act (*a*).

Use of certain premises for committee rooms or meetings to be illegal hiring.

XVI. (*a.*) (1.) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(*b.*) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Punishment of illegal payment, employment or hiring.

XVII. (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice (*b*).

Avoidance of election for extensive illegal practices, &c.

XVIII. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed (*c*) that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office (*d*) in the said borough.

(*a*) Hence in the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who when the expense was incurred was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate.

(*b*) And punishable as provided by section 7, *ante*.

(*c*) Note that this section may apply although the practices in question have been committed by persons other than the candidate or his agents; but in such a case the candidate could protect himself under sections 19 and 20, *post*.

(*d*) See note (*d*) to section 3, *ante*.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Appndx.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

XIX. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences (*e*), in reference to such election, and the election court further report that the candidate has proved to the court—

(*a.*) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(*b.*) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(*c.*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d.*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

Power of High Court and election court to except innocent act from being illegal practice, &c.

XX. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the Court sufficient—

(*a.*) That any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring (*f*); and

(*b.*) That such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(*c.*) That such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Sending in claims and making pay-

XXI. (1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor (*g*)

(*e*) Note that the offences of bribery, personation, and aiding and abetting in the commission of personation are not included here.

(*f*) Note that corrupt practices are not mentioned here.

(*g*) See note (*b*) to section 5, *ante*.

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ments for election expenses.

on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice (*a*), but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk (*b*) a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4.) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorized excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same (*c*).

(5.) If the candidate without such authorized excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice (*a*), and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by

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(*a*) And therefore punishable as provided by section 7, *ante*.

(*b*) That is to the clerk of the local board or improvement commissioners. Section 36, *post*.

(*c*) Note that any person may sue. See *ante* p. 292, note (*a*). The Crown cannot remit the penalties. See *Todd* v. *Robinson*, *ante*, p. 486.

reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorized excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this Act to the town clerk (*d*) shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person (*e*) on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

XXII. Every person guilty of a corrupt or illegal practice or of illegal employment, payment or hiring at a municipal election (*f*) is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Application of ss. 37 & 38 of 46 & 47 Vict. c. 51.

XXIII. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part II. of the Third Schedule to this Act, shall apply as part of this Act.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

XXIV. (*g*) (1.) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of

(*d*) See note (*b*) *ante*.
(*e*) Any person, not any person interested.
(*f*) See note (*b*) to section 3, *ante*.
(*g*) This section does not apply to elections of local boards and improvement commissioners. Section 36 (*c*), *post*.

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conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough shall not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5.) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6.) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.

45 & 46 Vict. c. 50.

Proceedings on Election Petitions.

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Petition for illegal practice.

XXV. (1.) A municipal election petition complaining of the election on the ground of an illegal practice (*a*) may be presented at any time before the expiration of fourteen days after the day on which the town clerk (*b*) receives the return and declaration respecting election expenses by the candidate to whose election the petition relates (*c*), or where there is an authorized excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse (*d*).

Time for presentation of petition alleging illegal practices.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict. c. 50.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

Withdrawal of election petition.

XXVI. (*e*) (1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in considera-

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(*a*) A petition may be presented for a corrupt practice under the Municipal Corporations Act, 1882, section 87, *post.*

(*b*) That is the clerk to the local board or commissioners. Section 36, *post.*

(*c*) See section 21, sub-section (3), *ante.*

(*d*) See section 21, sub-section (9), *ante.*

(*e*) See also the Municipal Corporations Act, 1882, section 95, *post.*

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tion that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.

45 & 46 Vict. c. 50.

(7.) In every case of the withdrawal of an election petition, by leave of the election court, such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Continuation of trial of election petition.

XXVII. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

Attendance of Director of public prosecutions on trial of election petition, and prosecution by him of offenders.

XXVIII. (1.) On every trial of a municipal election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or

before any other competent court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election. Appndx.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(*a.*) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(*b.*) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(*c.*) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882.

(8.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less 45 & 46 Vict. c. 50.

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than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant, or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

45 & 46 Vict. c. 50.

Power to election court to order payment by borough or individual of costs of election petition.

XXIX. (1.) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows;

(*a*.) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough (*a*); and

(*b*.) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them (*b*), and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct (*b*).

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall be in principle and so far as practicable apply to the

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(*a*) *i.e.*, by the local board or improvement commissioners (section 36).

(*b*) As to the recovery of these costs see section 32, *post*.

costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale, as between solicitor and client. Appndx. 45 & 46 Vict. c. 50.

Miscellaneous.

XXX. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions: General provisions as to prosecution of offences under this Act. 46 & 47 Vict. c. 51.

(*a.*) Where the Director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough (*c*), he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(*b.*) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections (*d*); and 45 & 46 Vict. c. 50.

(*c.*) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive. Sect. 94 (7).

XXXI. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office (*e*), and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date. Person incapacitated by conviction or report to vacate seat or office.

(*c*) See section 36, *post.*

(*d*) That is by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. 46 & 47 Vict. c. 51, s. 56.

(*e*) See *ante*, section 2, note (*e*).

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Payment and recovery of costs.

XXXII. (1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate (*a*).

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Service of notices.

XXXIII. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough (*b*), whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

Definitions.

45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

XXXIV. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.

Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.

XXXV. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city:

(2.) The expression "burgess" means, in relation to each municipal election, any person entitled to vote at such election:

(*a*) *i. e.*, out of the general district rate or other rate out of which the expenses of the improvement commissioners are payable (section 36, *post*).

(*b*) See section 4, note (*h*), *ante*.

(3.) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash : Appndx.

(4.) The enactments relating to personation, polling agents, and disclosure of votes shall not apply, save that if any person commits any offence under the City of London Municipal Elections Amendment Act, 1867, in relation to the declaration required by that Act to be made at the poll, he shall, in addition, be deemed guilty of a corrupt practice under this Act : 30 Vict. c. 1.

(5.) A vacancy in any office created by the decision of an election court shall be filled by a new election, and every summoning officer is hereby authorized and required to summon the electors for such election:

(6.) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor.

(7.) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at six in the evening.

(8.) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward not less than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

Application of Act to other Elections.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

XXXVI. (1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882 (*c*), as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election :

(*a.*) The area, officer, and rate mentioned opposite to the office in the

(*c*) This part is set out after this Act.

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second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(*b.*) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union (*a*), and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(*c.*) No corrupt and illegal practices list shall be made for any such election.

(*d.*) Vacancies created by the decision of an election court shall be filled by a new election (*b*).

(*e.*) A petition relating to the election of a guardian of a union may be tried at any place within the union (*c*).

(*f.*) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district (*d*) or in the metropolis;

(*g.*) Where the poll at any election to an office in the said schedule is taken by means of voting papers (*e*), such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply; but any offence in relation to voting papers to or personation or to voting at such election which is punishable on summary conviction (that is to say,) the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of Schedule II. to the Public Health Act, 1875 (*f*), shall, without prejudice to the punishment under such section and rule of a person guilty of such offence (*g*), be deemed to be an illegal practice within the meaning of the said provisions.

14 & 15 Vict. c. 105.
38 & 39 Vict. c. 55.

(*h.*) The Local Government Board shall have the same power as heretofore under section eight of the Poor Law Amendment Act, 1842, to determine any question arising as to the right of a person to act as guardian, except that the Board shall not have power—

5 & 6 Vict. c. 57.

(a.) To determine, until after the expiration of twenty-one days after the election of a person as guardian, any

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(*a*) Hence, if a guardian elected for a parish were incapacitated under section 3, sub-sect. (2), by reason of the corrupt practices of his agents, he could not during three years be elected for any parish in the union.

(*b*) Hence a casual vacancy will not happen.

(*c*) Otherwise it would have to be tried in the parish unless an order was made under the Municipal Corporations Act, 1882, s. 93, sub-sect. (2).

(*d*) See the Public Health Act, 1875, s. 6, *ante*, p. 17.

(*e*) This applies to elections under the Public Health Act, 1875.

(*f*) *Ante*, p. 416.

(*g*) This seems to mean that the offences in question are to be punished under Rule 69, though in other respects they are to be deemed to be illegal practices: *sed quære?*

question which can be determined upon an election petition under this section; nor

(b.) To determine any question which is raised by an election petition under this section, and is either awaiting decision or has been decided by an election court; nor

(c.) To determine any question of general corruption, or of any corrupt or illegal practice, except so far as appears to such Board necessary for determining the validity of any vote.

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part IV. of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

Exemption from provisions as to maximum expenses.

XXXVII. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act (*h*).

Repeal.

Repeal of Acts.

XXXVIII. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such repeal shall not affect anything duly done or suffered, or any right acquired or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if it had become so subject in pursuance of the provisions of this Act.

Commencement of Act.

XXXIX. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Extent of Act.

Act not to extend to Scotland or Ireland.

XL. This Act shall not extend to Scotland or Ireland.

Duration of Act.

XLI. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.

(*h*) Hence these provisions do not apply to elections of local boards or improvement commissioners.

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SCHEDULES.

FIRST SCHEDULE.

ELECTIONS to which this Act extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board, or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school board.	The school fund.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section seventy-seven from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight. Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two, sub-sect. four, from "and those judges" down to the end of the sub-section. Section ninety-four, sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE. Appndx.

Part I.

Enactments defining Corrupt Practices.—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102, sections 2 and 3.

II. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:— Bribery defined.

(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses *bonâ fide* incurred at or concerning any election.

III. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:— Bribery further defined.

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable

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consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 49.

Corrupt payment of rates to be punishable as bribery.

XLIX. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24.

Personation defined.

XXIV. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 1 and 2.

What is treating.

I. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

II. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by

himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 77.

LXXVII. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections. Definitions.

Part II.

Enactments relating to Disqualification of Electors. Section 23.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 37 and 38.

XXXVII. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. Prohibition of disqualified persons from voting. 35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

XXXVIII. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported. Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

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(5.) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of

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indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty . . .

(6.) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

(*a.*) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses:

(*b.*) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses:

(*c.*) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

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FOURTH SCHEDULE.

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Form of Declaration by Candidate as to Expenses.

Section 21.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C. D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E. F.*
Justice of the Peace for

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 Vict. Cap. 50.)

Part IV. (*a*).

Corrupt Practices and Election Petitions.

Corrupt Practices.

LXXVII. In this part— Definitions.

"Bribery," "treating," "undue influence," and "personation," include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any

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(*a*) It is necessary to include this part in the present work, as by 47 & 48 Vict. c. 70, s. 36, it now applies to elections of local boards and improvement commissioners.

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penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (*a*):

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"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

* * * * *

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this part complaining of an undue municipal election:

31 & 32 Vict. c. 125.

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

"Prescribed" means prescribed by general rules made under this part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates (*b*).

* * * * *

Avoidance of election for general corruption.

LXXXI. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

* * * * *

Striking off votes.

LXXXV. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny (*c*).

Personation.

LXXXVI. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

Election Petitions.

Power to question municipal election by petition.

LXXXVII. (1.) A municipal election may be questioned by an election petition on the ground—

(*a.*) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

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(*a*) See the definition of these offences, *ante*, p. 1015.

(*b*) For the application of these definitions to elections of local boards, &c., see 47 & 48 Vict. c. 70, s. 36, *ante*, p. 1011.

(*c*) As to the striking off of the votes of persons guilty of illegal practices or payments, see 47 & 48 Vict. c. 70, s. 22, *ante*, p. 1003.

(*b.*) That the election was avoided by corrupt practices or offences against this part committed at the election; or

(*c.*) That the person whose election is questioned was at the time of the election disqualified; or

(*d.*) That he was not duly elected by a majority of lawful votes (*d*).

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition.

Presentation of petition.

LXXXVIII. (1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer (*e*) of whose conduct a petition complains, may be made a respondent to the petition.

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer (*f*) shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices (*g*), and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

Security for costs.

LXXXIX. (1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner (*h*), either by a deposit of money, or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner (*h*) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognizance on the ground that any surety is

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(*d*) An election may also be questioned for illegal practices: 47 & 48 Vict. c. 70, s. 25, *ante.*

(*e*) The returning officer on local board elections is the chairman. (See *ante,* p. 399.)

(*f*) Prescribed here means prescribed by general rules made under this part, (sections 77 and 100; and see 47 & 48 Vict. c. 70, s. 34.)

(*g*) For the corresponding provision as to illegal practices, see 46 & 47 Vict. c. 70, s. 25, *ante.*

(*h*) See note (*f*), *ante.*

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insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

(5.) An objection to a recognizance shall be decided in the prescribed manner (*a*).

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Petition at issue.

XC. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal election list.

XCI. (1.) The prescribed officer (*a*) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (*a*).

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this part the petition shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution of election court.

XCII. (1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for

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(*a*) See note (*f*), *ante*, p. 1021.

the time being on the rota for the trial of parliamentary election petitions . . . . (*b*).

(5.) If a commissioner to whom the trial of a petition is assigned, dies or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

Trial of election petition.

XCIII. (1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within the borough (*c*), except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(*a.*) Whether any corrupt practice or offence against this part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

(*b.*) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this part;

(*c.*) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof (*d*).

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(*b*) See 47 & 48 Vict. c. 70, s. 36, sub-sect. (2), *ante*.

(*c*) That is the district of the local board or the Improvement Act district.

(*d*) The court must further report as to illegal practices in manner prescribed by 47 & 48 Vict. c. 70, s. 8, sub-sect. (2), *ante*.

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(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at *nisi prius*.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Witnesses.

XCIV. (1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at *nisi prius*, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the orders shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

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(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Withdrawal of petition.

XCV. (1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place (*a*).

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement of petition.

XCVI. (1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal and substitution of respondents.

XCVII. (1.) If before the trial of an election petition a respondent other than a returning officer—

(*a*.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(*b*.) Gives the prescribed notice that he does not intend to oppose the petition;

(*a*) See further, as to the withdrawal of a petition, 47 & 48 Vict. c. 70, s. 26, *ante*.

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the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

Costs on election petitions.

XCVIII. (1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed (*a*).

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition.

Reception of and attendance on the election court.

XCIX. (1.) The town clerk (*b*) shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

(2.) All chief and head constables, superintendents of police, headboroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(*a*) So much of this sub-section as relates to the principles of taxation is repealed. 47 & 48 Vict. c. 70, Schedule 2.

(*b*) That is, the clerk to the local board, &c. 47 & 48 Vict. c. 70, s. 36.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

Rules of procedure and jurisdiction.

C. (1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter general rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (*c*).

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

Expenses of election court.

CI. (1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate (*d*).

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk (*e*) for receiving the election court, shall be repaid, wholly or in

(*c*) And see also 47 & 48 Vict. c. 70, s. 30 (*b*), *ante*.

(*d*) The expenses will be paid out of the general district rate in cases of petitions against the election of a member of a local board or improvement commissioners. 47 & 48 Vict. c. 70, s. 36, *ante*.

(*e*) See note (*b*), *ante*.

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part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(*a.*) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(*b.*) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

Acts done pending a petition not invalidated.

CII. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to elections in the room of persons unseated on petition.

CIII. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*a*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

Prohibition of disclosure of vote.

CIV. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

* * * * *

(*a*) In the case of local boards and improvement commissioners there must be a new election. 47 & 48 Vict. c. 70, s. 36, *ante*.

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TEMPLE
MIDDLE

URBAN AND RURAL

SANITARY AUTHORITIES;

INCLUDING THOSE UNDER THE

Canal Boats and Cattle Diseases.

LIST OF

BOOKS AND FORMS

REQUIRED BY

LOCAL BOARDS.

Published by SHAW & SONS, Fetter Lane and Crane Court, E.C.

Resolutions of Owners and Ratepayers.

PUBLIC HEALTH ACT, 1875, SCHED. III.

No.	
31	Requisition for a Meeting of Owners and Ratepayers to consider a Resolution.
32	Notice Convening Meeting.
33	Notice of Result of Meeting.
34	Notice of Poll as to adoption of Resolution.
35	Voting Papers, with the Name of th Place and the Resolution printed in, at most moderate prices.
36	Book for adding up Votes.
37	Notice of Result of Poll.

Qualification of Electors for Local Boards,

Under Sched. IV. of Public Health Act, 1875.

38	Register of Owners and Proxies.
39	Notice of Time for making Claims and Objections (Form L. in Sched.)
40	Owner's Claim (Form L. in Sched.)
41	Claim of Proxy, indorsed with Copy of Appointment (Form L. in Sched.)
42	Claim of Proxy in case of a Corporation, indorsed with Copy of Appointment (Form L. in Sched.)

SHAW & SONS, Printers and Publishers,

No.

43 Notice of Objection (Form L. in Sched.)

44 Appointment of Proxy by Owner or Joint-Stock Company (Form M. in Sched.)

45 Appointment of Proxy by Corporation (Form M. in Sched.)

Election of Local Board.

46 Notice of Election.

46*a* Notice of First Election.

47 „ filled up with Name of District, Dates, &c., at a most moderate charge.

48 Nomination Paper.

49 Notice of Withdrawal by Person nominated.

50 List of Persons Elected, without Poll.

51 Voting Papers (Form N. in Sched.)

52 „ printed with Names of Candidates, &c., at a moderate charge.

53 Book for adding up Votes, or Poll Book.

54 Notice to Person Elected.

55 List of Persons Elected, with Poll.

56 Declarations by Members Elected, bound in book.

Register of Voters.

LOCAL BOARD ACCOUNT BOOKS,

Prescribed by the Order of the Local Government Board.

Circular Letter of the Local Government Board accompanying the Order, per doz., 3s.

Exemplification of the New Local Board Accounts. By H. Lloyd Roberts, Esq., Barrister-at-Law, and Auditor of the Metropolitan District, price 4s. A Copy of this Exemplification will be presented gratis to all Clerks who order a complete set of the Books.

Fetter Lane and Crane Court, London, E.C.

Clerk's Books.

		s.	d.
A.	**Minute Book** (Special Form), Demy Folio, Handmade paper, full Green Vellum, 5 qrs.	30	0
	Ditto ditto Foolscap Folio, 5 qrs.	24	0
	Ditto ditto 3 qrs., Bound in Basil for small Boards	14	0
	Ditto ditto Half-bound, 3 qrs., for Rough Minutes	8	6
B.	**Ledger**, Demy Folio, Handmade paper, Green Vellum, 5 qrs.	30	0
	Ditto ditto Half-bound rough	10	6
	Ditto Foolscap, Rough Calf, 5 qrs.	24	0
	Ditto ditto 3 qrs., Bound in Basil, for small Boards	14	0
	Ditto ditto Half-bound, 3 qrs., for Rough Entries	8	6
C.	**Highway Repairs Expenditure Account**, in Books, Weekly Payments, for Two Years	4	0
	Ditto ditto ditto Fortnightly, for Four Years	4	6
D.	**Order Check Book**, in books of 100 each	4	6
	Ditto Six Books, with name of Board printed in	22	6
M.	**Cash Account Book**, 1 qr., *see* Art. 11 of Order	7	6
	Ditto 2 qrs. ditto	10	0
3	**Letter Book**, foolscap, for Copying Press, half-bound calf and lettered 250 *leaves*	10	6
	„ „ „ 500 „	12	6
3	„ „ „ 1000	15	6
3*a*	„ „ quarto 250 „	8	0
	„ „ „ 500 „	9	0
	„ „ „ 1000 „	12	6
5*a*	**Petty Cash Book**	5	0
5*c*	**Return of Salaries**		
6	**Treasurers Bond**		
9	**Cheques on Treasurer** *in books of* 100 *each*	4	0
9*a*	„ „ engraved with name of authority filled in, and printed on surface tints to prevent erasure.		

Samples and estimates on application.

Local Board Accounts.

No.		s.	d.
10	Contracts (for these see page 74.)		
11	Direction of Local Authority to Medical Officer of Health to inspect and examine Animals, Food, &c. - *per quire*	3	0
	Seals of Local Board or Corporation specially prepared. *Sketches and specimens free on application.*		
11*b*	Contract for Works - - - - - - - *each*	1	0

Treasurer's Accounts.

E.	Treasurer's Account Book, Foolscap Folio, Half-bound, 1 qr.	7	6
	Ditto ditto ditto 2 qrs.	10	0
E 1.	Ditto ditto Small size - - - - -	6	0
8	Treasurer's Pass Book - - - - - - -	4	0

Surveyor's Accounts.

F.	Wages Account Book, Bound Limp, ½ qr. - - - -	5	0
	Ditto Half-bound, 1 qr. - - - -	7	6
	Ditto ditto, 2 qrs. - - - -	10	0
	Ditto Loose Sheets, per qr. - - -	4	0
G.	Stores Account, Half-bound, 1 qr. - - - - -	7	0
	Ditto ditto 2 qrs. - - - - -	10	0
M.	Cash Account Book, 1 qr., *see* Article 6, section 3, of Order -	7	6
	Ditto 2 qrs., ditto - - -	10	0
L.	General Receipt Book, 100 each, ditto - - -	1	6

Medical Officers' Books and Forms.

12	Medical Officers' Book of Applications, Proceedings, &c.	7	6
13	Medical Officers' Visitation Report Book, - - -	8	0
14	Direction of Medical Officer of Health as to Seizure of Diseased Animals, Unsound or Unwholesome Food, &c. *per quire*	3	0
E.	Dangerous Infectious Diseases (Notice of) from Poor Law Medical Officer to the Medical Officer of Health, or to the Inspector of Nuisances, in books with counterpart, *book of* 50	2	6
F.	Register of Deaths and Diseases for use of Medical Officer of Health, in books, with Index of Diseases at beginning. Prepared by Dr. Robinson, Medical Officer of Health for the Combined Sanitary Authorities of East Kent - -	27	6

Local Board Accounts.

		s.	d.
G.	**Tabular Form of Deaths and Diseases**, showing at a glance the Deaths and Diseases in one year. Prepared by Dr. Robinson. *per quire*	15	0
H.	„ „ in book, for reference. 1 *quire*	30	0
J.	**Tabular Form of Deaths and Diseases**, showing at a glance the Deaths and Diseases in each week and each quarter. Prepared by Dr. Robinson. *per quire*	15	0
K.	„ „ in book, for reference. 1 *quire*	30	0
L.	**Spring-back Portfolios**, Foolscap, for Medical Officer of Health to hold Returns of Deaths	3	6
N.	**Quarterly Return** by Medical Officer to Local Government Board of Sicknes and Death *per quire*	4	0

Inspectors' Books and Forms.

15	**Form of Contract** between Sanitary Authority and Inspector of Nuisances *each*	0	6
16	**Inspectors' Report Book.** 1 *quire, half-bound*	10	0
	„ „ 2 *quires, half-bound*	12	6
	„ „ *in loose sheets for reports, per quire*	4	0
17	**Inspectors' Journal** of Visits and Continuous Record	10	6
17*a*	**Pocket Memorandum** Book and Journal	3	6
18	**Inspectors' Return** of Nuisances Book	8	0
19	**Inspectors' Presentment** Book of Complaints	14	0
M	**Inspectors' Sanitary Survey**, compiled by Dr. Robinson, Medical Officer of Health for the Combined Sanitary Authorities of East Kent, *in books of* 2½ *quires*	14	6
M*a*	„ „ *in loose sheets, per quire*	4	0
21	**Report** as to **Noxious Trades**, or Breach of Non-observance of Bye-Laws as to the same *per quire*	3	0
22	**Report** to Medical Officer of Houses where Sickness prevails or Sudden Death occurs, *in books of* 50 *each*	3	0
23	**Report** to Medical Officer of a **Trade Nuisance** injurious to health, *in books of* 50 *each*	3	0
23*a*	**Notice** to Medical Officer of Health as to existence of Nuisance or Overcrowding, *in books of* 50 *each*	3	0
24	**Report** to Medical Officer of **Overcrowding Houses**, *in books of* 50 *each*	4	0

SHAW & SONS, Printers and Publishers,

Local Board Accounts.

No.		s.	d.
24*a*	Report to Medical Officer of suspected Water Pollution, *in books of* 50 *each*	4	0
25	Certificate of Analyst as to Adulterated Articles of Food, *per quire*	3	0
26	Order of Sanitary Authority to Disinfect House - - -	3	0
27	,, ,, to Remove Person suffering from Infectious Disease - - - - - - - - -	3	0

For other Forms required by Inspector, see p. 16, et seq.

Registrars' Forms.

A.	Weekly Return of Deaths from Registrar of Births and Deaths to Medical Officer of Health, with Divisions as in Burial Register, *in books with counterpart* - - - -	4	6
AA.	,, ,, without Divisions -	4	6
B.	Immediate Form of Notice from Registrar of Births and Deaths to Medical Officer of Heath, of Death from *Infectious Disease, in book with counterpart* - - - -	3	0
A. 1.	Registrar's Nil Return to Medical Officer, *in books of* 50 *each*	2	6

Collector's and other Officer's Accounts.

28	Notice of Intended Rate. - - - - - *per quire*	3	0
28*b*	Notice of Rate having been made, *in books of* 50 *leaves each* -	3	0
	Notice to Occupier of Amended Rates - - - - -	2	6
H.	Rate Collection Account, 36 lines on a page, Half-bound, 1 qr.	12	0
	Ditto ditto ditto ,, 2 qrs.	16	0
	Ditto ditto ditto ,, 3 qrs.	20	0
H. 1	Rate Collection Account, 15 lines on a page, Half-bound, 1 qr.	5	0
	Ditto ditto ditto 2 qrs.	6	6
	Ditto ditto ditto 3 qrs.	8	0
	General District Rate Book, and Rate Collection Account, 15 by 15 inches, Half-bound Cloth, 1 quire, 1,575 names -	16	0
	,, ,, 2 quires, 3,350 ,, -	24	0
	,, ,, 3 quires, 5,000 ,, -	32	0
	General District Rate Book— $12\frac{1}{2}$ by $7\frac{1}{2}$ inches, Half-bound, Cloth, 1 qr., 650 names -	4	6
	,, ,, 2 qrs., 1,330 ,,	6	0
	,, ,, 3 qrs., 2,000 ,,	8	6

Fetter Lane and Crane Court, London, E.C.

Local Board Accounts.

No.		s.	d.
	General District Rate Book—		
	15 by 13 inches, Half-bound, Cloth, 1 qr., 1,575 names -	12	0
	„ „ 2 qrs., 3,350 „ -	16	9
	„ „ 3 qrs., 5,000 „ -	21	0
	General District Rate Book, Glen's Form, Super-royal—		
	6½ by 10 inches, Half-bound, Cloth, 1 qr. 650 names -	4	6
	„ „ „ 2 qrs. 1330 „ -	6	0
	„ „ „ 3 qrs. 2000 „ -	8	0
	10½ by 13 inches, „ „ 1 qr. 1575 „ -	6	6
	„ „ „ 2 qrs. 3350 „ -	10	0
	„ „ „ 3 qrs. 5000 „ -	12	0
	Ditto another sort, Drawn by James Death, Esq., Clerk to the Local Board for the Cheshunt District, in books of		
	1 quire, strongly Half bound - - - - - - -	12	0
	2 quires „ - - - - - - -	16	0
	3 quires „ - - - - - - -	20	0
36	**Highway Rate Book—**		
	For 1,575 payers - - - - - - - - -	10	0
	„ 3,350 „ - - - - - - - - -	14	0
	„ 5,033 „ - - - - - - - - -	18	0
37	**Private Improvement Rate Book,** Super-royal—		
	6½ by 10 inches, Half-bound Cloth, 1 qr., 650 names -	4	6
	„ „ 2 qrs., 1,330 „ -	6	0
	„ „ 3 qrs., 2,000 „ -	8	0
37*a*	Ditto 10½ by 13 inches, Half-bound Cloth, 1 qr., 1,575 names	6	6
	„ „ 2 qrs., 3,350 „	10	0
	„ „ 3 qrs., 5,000 „	12	0
37*b*	**Private Improvement Rate Collection Book—**		
	1 quire, 650 names - - - - - - - - -	4	6
	2 quires, 1,330 „ - - - - - - - - -	6	0
	3 „ 2,000 „ - - - - - - - - -	8	0
38	**Water Rate Book,** Super-royal—		
	6½ by 10 inches, Half-bound Cloth, 1 qr., 650 names -	4	6
	„ „ 2 qrs., 1,330 „ -	6	0
	„ „ 3 qrs., 2,000 „ -	8	0

SHAW & SONS, Lithographers and Stationers,

No.					s.	d.
38a	**Water Rate Book,** Super-royal—					
	10½ by 13 inches, Half-bound Cloth,	1 qr.,	1,575 names	-	10	0
	„ „	2 qrs.,	3,350 „	-	14	0
	„ „	3 qrs.,	5,000 „	-	18	0
39	**Special District Rate Book,** Super-royal—					
	6½ by 10 inches, Half-bound, Cloth,	1 qr.,	650 names	-	4	6
	„ „	2 qrs.,	1,330 „	-	6	0
	„ „	3 qrs.,	2,000 „	-	8	0
39a	Ditto 10½ by 13 inches, Half-bound Cloth,	1 qr.,	1,575 names		10	0
	„ „	2 qrs.,	3,350 „		14	0
	„ „	3 qrs.,	5,000 „		18	0
40	**General Rate Book,** Super-royal—					
	6½ by 10 inches, Half-bound, Cloth,	1 qr.,	650 names	-	4	6
	„ „	2 qrs.,	1,330 „	-	6	0
	„ „	3 qrs.,	2,000 „	-	8	0
40a	Ditto 10½ by 13 inches, Half-bound Cloth,	1 qr.,	1,575 names		10	0
	„ „	2 qrs.,	3,350 „		14	0
	„ „	3 qrs.,	5,000 „		18	0
45	**Sewers Rate Book,** Super-royal—					
	6½ by 10 inches, Half-bound Cloth,	1 qr.,	650 names	-	4	6
	„ „	2 qrs.,	1,330 „	-	6	0
	„ „	3 qrs.,	2,000 „	-	8	0
45a	Ditto 10½ by 13 inches, Half-bound Cloth,	1 qr.,	1,575 names		10	0
	„ „	2 qrs.,	3,350 „		14	0
	„ „	3 qrs.,	5,000 „		18	0
44 & 45	**Sewers and General Rate Book,** Super-royal—					
	6½ by 10 inches, Half-bound, Cloth,	1 qr.,	650 names	-	4	6
	„ „	2 qrs.,	1,330 „	-	6	0
	„ „	3 qrs.,	2,000 „	-	8	0
44&45a	**Ditto** 10½ by 13 inches, Half-bound, cloth,	1 qr.,	1,575 names		10	0
	„ „	2 qrs.,	3,350 „		14	0
	„ „	3 qrs.,	5,000 „		18	0
1.	**Collecting and Deposit Account,** Half-bound,	1 qr.	-	-	9	0
	Ditto ditto ditto	2 qrs.	-	-	12	0
	Ditto ditto ditto	3 qrs.	-	-	15	0

		s.	d.
K.	**Rate Receipt Check Book,** in Books of 100 - - -	1	0
	Ditto ditto 200 - - -	1	6
	Ditto ditto 300 - - -	2	0
	Where Six Books of 200 are taken, the name of the Board can be printed in without extra charge.		
L.	**General Receipt,** in Books of 100 - - - - - -	1	6
M.	**Cash Account,** Half-bound, 1 qr. - - - - - -	7	6
	Ditto ditto 2 qrs. - - - - -	10	0
41	**Collectors' Notice** of having called for Rates, in Books of 200 -	1	4
	List of Rate Defaulters, *per quire of* 24 *forms* - - -	3	0
33	**Collectors' Receipt** and Payment Book - - - 1 *quire*	6	0
	Demand Note. *In books of* 100 - - - - - -	2	0
43	**Collectors' Weekly Statement,** *per quire of* 48 *forms* -	3	0
	„ „ *in book* - - - -	8	0
44	**Collectors' Unpaid Rate Statement,** *per quire of* 48 *forms* -	3	0
	„ „ *in book* - - - -	8	0

Financial Statement, &c.

O.	**Financial Statement,** in Books 1 qr. each - - - -	10	0
	Ditto Loose Sheets, per qr. - - - -	6	0
P.	**Statement of Receipts and Expenditure** of Local Board acting as BURIAL BOARD, Half-bound, 1 qr. - - -	10	0
	Ditto Loose Sheets, per qr. - - - -	6	0
Q.	**Loan Account,** Half-bound, 1 qr. - - - - - -	10	0
	Ditto Loose Sheets, per qr. - - - -	6	0

SHAW & SONS, Printers and Publishers,

THE FOLLOWING

SET OF ACCOUNT BOOKS FOR A SMALL BOARD,

Can be supplied for the very moderate sum of £3 17*s.*:—

		s.	*d.*
A.	Minute Book. 3 qrs., whole Basil	14	0
B.	Ledger. 3 qrs., whole Basil	14	0
C.	Highway Repairs Expenditure Account. Weekly Payments	4	0
D.	Order Check Book	4	6
L.	General Receipt Book	1	6
M.	Cash Account Book	7	6
E.	Treasurers Account Book. Small size	6	0
F.	Wages Account Book. ½ qr. limp	5	0
G.	Stores Account Book. 1 qr.	7	6
O.	Financial Statement. ½ qr.	3	0
P.	Statement of Receipts and Expenditure of Local Board acting as Burial Board. ½ qr.	3	0
Q.	Loan Account. ½ qr.	3	0
	Robert's Exemplification	4	0
	Total	£3	17 0

The Rate Collecting Books, Rate Receipt Books, and Collecting and Deposit Books are purposely omitted from the above estimate, as the necessity for these vary according to the Board's requirements.

LIST OF

IMPROVEMENT ACT COMMISSIONERS

ACCOUNT BOOKS AND FORMS.

Clerk's Books.

		s.	d.
A.	**Minute Book** (Special Form), Demy Folio, Hand-made paper, full Green Vellum, 5 qrs.	30	0
	Ditto ditto Foolscap Folio, 5 qrs.	24	0
	Ditto ditto 3 qrs., Bound in Basil for small Boards	14	0
	Ditto ditto Half-bound, 3 qrs., for Rough Minutes	8	6
B.	**Ledger**, Demy Folio, Hand-made paper, Green Vellum, 5 qrs.	30	0
	Ditto Foolscap, Rough Calf, 5 qrs.	24	0
	Ditto ditto 3 qrs., Bound in Basil, for small Boards	14	0
	Ditto ditto Half-bound, 3 qrs., for Rough Entries	8	6
C.	**Highway Repairs Expenditure Account**, in Books, Weekly Payments, for Two Years	4	0
	Ditto ditto ditto Fortnightly, for Four Years	4	6
D.	**Order Check Book**, in books of 100 each	4	6
	Ditto Six Books, with name of Board printed in	22	6
M.	**Cash Account Book**, 1 qr., *see* Art. 11 of Order	7	6
	Ditto 2 qrs. ditto	10	0

Treasurer's Accounts.

E.	**Treasurer's Account Book**, Foolscap Folio, Half-bound, 1 qr.	7	6
	Ditto ditto ditto 2 qrs.	10	0
8	**Treasurer's Pass Book**	4	0

SHAW & SONS, Printers and Publishers,

Surveyor's Accounts.

		s.	d.
F.	Wages Account Book, Bound Limp, ¼ qr. - - - -	5	0
	Ditto Half-bound, 1 qr. - - - -	7	6
	Ditto Loose Sheets, per qr. - - -	4	0
G.	Stores Account, Half-Bound, 1 qr. - - - - -	7	0
	Ditto ditto 2 qrs. - - - - -	10	0
M.	Cash Account Book, 1 qr., *see* Article 6, section 3, of Order -	7	6
	Ditto 2 qrs., ditto - - -	10	0
L.	General Receipt Book, 100 each, ditto - - -	1	6

Collector's and other Officer's Accounts.

H.	Rate Collection Account, 36 lines on a page, Half-bound, 1 qr.	12	0
	Ditto ditto ditto 2 qrs.	16	0
	Ditto ditto ditto 3 qrs.	20	0
I.	Collecting and Deposit Account, Half-bound, 1 qr. - -	9	0
	Ditto ditto ditto 2 qrs. - -	12	0
	Ditto ditto ditto 3 qrs. - -	15	0
K.	Rate Receipt Check Book, in Books of 100 - - -	1	0
	Ditto ditto 200 - - -	1	6
	Ditto ditto 300 - - -	2	0

Where Six Books of 200 are taken, the name of the Board can be printed in without extra charge.

O.	Financial Statement, in Books 1 qr. each - - - -	10	0
	Ditto Loose Sheets, per qr. - - - -	6	0
Q.	Loan Account, Half-bound, 1 qr. - - - - -	10	0
	Ditto Loose Sheets, per qr. - - - -	6	0

RURAL SANITARY AUTHORITIES.

Clerks' and Treasurers' Books.

No.		s.	d.
1	Minute Book, demy, bound in calf, and specially lettered for Sanitary Authority - - - - - - - - -	25	0
1*a*	„ „ foolscap, 5 quires, bound in calf, and lettered ditto - - - - - - - -	18	0
1*b*	„ „ foolscap, Rough, 3 *quires, half-bound* - -	8	6
2	General Ledger, demy, calf, and specially lettered for Sanitary Authority - - - - - - -	28	0
2*a*	„ „ foolscap, 5 quires, calf, and lettered ditto -	21	0
	„ „ rough - - - - - - - -	10	0
2*b*	Parochial Ledger, demy, 5 quires, calf - - - -	28	0
2*c*	Ditto ditto half page for Special Expenses -		
2*d*	„ „ two half-years on a page, demy, 5 quires, calf	32	6
2*e*	„ „ foolscap, 5 quires, calf - - - -	21	0
	„ „ „ 3 „ half-bound and lettered -	10	0
	„ „ „ rough - - - - -	10	0
2*f*	„ „ „ two half-years on a page, 5 quires	26	0
2*g*	„ „ „ half page for Special Expenses „		
3	Letter Book for Copying Press, foolscap, bound half-calf, and lettered - - - - - 250 leaves	10	9
	500 „	12	6
	1000 „	15	6
3*a*	„ quarto - - - - - 250 „	8	0
	500 „	9	0
	1000 „	12	6
4	Precept to Overseers for General Expenses, *in books of* 50 *each*, 4*s.*; 100 *each* - - - - - - - -	7	6
5	Precept for Special Expenses, *in books of* 50 *each* - -	4	0
	„ „ „ „ 100 „ - -	7	6
5*a*	Petty Cash Book - - - - - - - - -	5	0
5*b*	Return of Medical Officers' and Inspectors' Salaries *per quire*	3	0
	„ „ 1 quire, double size, in books - - -	10	0
5*c*	Financial Statement, - - - - - *per quire*	7	6
	„ „ - - - - - in books of 2 *quires*	27	6
5*d*	Parochial Statement - - - - - *per quire*	3	6

Rural Sanitary Authority Accounts.

No.		s.	d.
C	**Weekly Return**, from Clerk to the Guardians to the Medical Officer of Health, of Sickness and Deaths in the Union Workhouse - - - *per quire* 48 *forms*	4	0
D	**Weekly Return** of Out-door Sickness and Death „	4	0
7	**Treasurers' Receipt** and **Payment Book**, foolscap 1 *quire*	7	6
7a	„ royal 8vo., bound red skiver - - 2 *quires*	8	6
8	**Treasurers' Pass Book** - - - - - - - -	4	0
9	**Cheques** on Treasurer, in books of 100 - - - - -	4	0
	„ „ engraved, with Name of Authority, Treasurer, &c., filled in, and printed on surface tints to prevent erasures. *Estimates on application.*		
	Treasurer's Bond - - - - - - - - -	0	6
10	**Contracts**, see page 74.		
11	**Direction** of **Sanitary Authority** to Medical Officer of Health to inspect and examine Animals, Food, &c. - *per quire*	3	0
11b	**Contract for Works** - - - - - - - - *each*	1	0
	Seal of Sanitary Authority, specially prepared. *Sketches and Specimens free on application.*		
	Ordnance Survey Maps of Town, Village, Parish, &c.		

For "Notices of Rates," &c., *see "Rating and Borrowing Powers," pages* 7, 24.

Medical Officers' Books and Forms.

12	**Medical Officers' Book** of **Applications, Proceedings, &c.**	7	6
13	**Medical Officers' Visitation Report Book** - - -	8	0
14	**Direction** of Medical Officer of Health as to Seizure of Diseased Animals, Unsound or Unwholesome Food, &c., *per quire* -	3	0
E	**Dangerous Infectious Diseases** (Notice of) from Poor Law Medical Officer to the Medical Officer of Health, or to the Inspector of Nuisances, in books with counterpart, *book of* 50	2	6
F	**Register of Deaths and Diseases** for use of Medical Officer of Health, in books, with Index of Diseases at beginning. Prepared by Dr. Robinson, Medical Officer of Health for the Combined Sanitary Authorities of East Kent - -	27	6

Rural Sanitary Authority Accounts.

No.		s.	d.
G	**Tabular Form of Deaths and Diseases,** shewing at a glance the Deaths and Diseases in one year. Prepared by Dr. Robinson. *per quire*	15	0
H	„ „ in book, for reference. 1 *quire*	30	0
J	**Tabular Form of Deaths and Diseases,** shewing at a glance the Deaths and Diseases in each week and each quarter. Prepared by Dr. Robinson. *per quire*	15	0
K	„ „ in book, for reference. 1 *quire*	30	0
L	**Spring-back Portfolios,** Foolscap, for Medical Officer of Health to hold Returns of Deaths - - - - - -	3	6
N	**Quarterly Return** by Medical Officer to Local Government Board of Sickness and Death - - - - *per quire*	4	0

Inspectors' Books and Forms.

15	**Form of Contract** between Sanitary Authority and Inspector of Nuisances - - - - - - - - *each*	0	6
16	**Inspectors' Report Book,** 1 *quire, half-bound* - - -	10	0
	„ „ 2 *quires, half-bound* - - -	12	6
	„ „ *in loose sheets for reports, per quire*	4	0
17	**Inspectors' Journal** of Visits and Continuous Record - -	10	6
17*a*	**Pocket Memorandum** Book and Journal - - - -	3	6
18	**Inspectors' Return** of Nuisances Book - - - -	8	0
19	**Inspectors' Presentment** Book of Complaints - - -	14	0
L	**Return of Proceedings** under Nuisances Removal Act - -		
M	**Inspectors' Sanitary Survey,** compiled by Dr. Robinson, Medical Officer of Health for the Combined Sanitary Authorities of East Kent, *in books of* 2½ *quires* - - - - -	14	6
M*a*	„ „ *in loose sheets, per quire* - -	4	0
21	**Report** as to **Noxious Trades,** or Breach or Non-observance of Bye-Laws as to the same - - - - *per quire*	3	0
22	**Report** to Medical Officer of Houses where Sickness prevails or Sudden Death occurs, *in books of* 50 *each* - - -	3	0
23	**Report** to Medical Officer of a **Trade Nuisance** injurious to health, *in books of* 50 *each* - - - - - -	3	0
23*a*	**Notice to Medical Officer** as to existence of Nuisance or Over-crowding - - - - - *in books of* 50	3	0

SHAW & SONS, Printers and Publishers,

No.		s.	d
24	Report to Medical Officer of Overcrowding Houses, *in books of 50 each*	4	0
24a	„ „ of suspected Water Pollution „	4	0
25	Certificate of Analyst as to Adulterated Articles of Food, *per quire*	3	0
26	Order of Sanitary Authority to Disinfect House - -	3	0
27	„ „ to Remove Person suffering from Infectious Disease - - - - - - - - -	3	0
A 3	Notice of Nuisance to Owner or Occupier by Inspector of Nuisances - - - - - - - - *per quire*	3	0

For other Forms required by Inspector see p. 18, et seq.

Registrars' Forms.

A.	Weekly Return of Deaths from Registrar of Births and Deaths to Medical Officer of Health, with Divisions as in Burial Register, *in books with counterpart* - - - - -	4	6
AA.	„ „ without Divisions -	4	6
B.	Immediate Form of Notice from Registrar of Births and Deaths to Medical Officer of Health, of Death from *Infectious Disease, in book with counterpart* - - -	3	0
A. 1	Registrar's Nil Return to Medical Officer, *in books of 50 each*	2	6

Special Expenses, Rate Books, &c.

(FOR RURAL AUTHORITY ONLY.)

28	Rate Receipt Book, 100, 1*s.*; 200, 2*s.*; and 300 - - -	3	0
29	Rate Book— 500 names, 15 lines, Half-bound - - -	4	6
	„ „ 1,000 „ „ „ - - -	6	0
	„ „ 1,500 „ „ „ - - -	8	6
	„ „ 2,000 „ „ „ - - -	10	0
	Ditto ditto—1,728 „ 36 lines, „ - - -	10	0
	„ „ 3,456 „ „ „ - - -	14	0
	„ „ 5,184 „ „ „ - - -	18	0

No.		s.	d.
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31	Collecting and Deposit Book, 1 quire - - - - - -	4	0
	,, ,, 2 quires - - - - - -	6	0
	,, ,, 3 ,, - - - - - -	7	6
32	Collectors' Monthly Statement, in books, 1 quire each -	6	0
	,, ,, ,, 2 quires each -	9	0
	,, ,, in quires, per quire -	3	0
33	,, Receipt and Payment Book - - - - -	6	0

FORMS FOR CARRYING OUT
THE PUBLIC HEALTH ACTS.

The following Forms, with few exceptions, 3s. per quire.

Sewerage and Drainage.

57 Sect. 16.—Notice to Owner or Occupier of intention to carry Sewer into, through, or under private Land, &c.

58 ,, 21.—Notice of Intention to Drain into Sewer of Local Authority

59 ,, 23.—Notice to Owner or Occupier to make a Covered Drain.

60 ,, 24.—Notice of closing old Drain and providing new (by Local Authority).

60*a* ,, 26.—Written Consent to Building over Sewer, &c.

61 ,, 26.—Notice by URBAN Authority of new Building over or under Sewer.

Sewage Works without Districts.

62 Sect. 32.—Notice to Owners, &c., of intended Sewage Works.

63 Notice of Objection by Owner.

Privies, Watercloseets, &c.

64 Sect. 35.—Information for building House without Privy, Ashpit, &c.

65 Summons.

66 Conviction.

No.

66*a* Sect. 35.—Report of Surveyor.

67 „ 36.—Notice to provide Privy, Watercloset, &c.

68 „ 38.—Notice to provide separate Waterclosets for each Sex.

69 „ 41.—Application to Local Authority concerning Drain, Watercloset, &c., supposed to be a nuisance.

70 Notice by Local Authority to Occupier of intended entry to examine Drain, &c.

71 Authority to Surveyor or Inspector to enter.

72 Notice to Owner or Occupier to repair Drain, &c.

Scavenging and Cleansing.

REGULATIONS AS TO STREETS AND HOUSES.

73 Sect. 43.—Notice to Local Authority to remove House Refuse.

74 „ 46.—Certificate of Medical Officer of House being in unwholesome condition.

75 Notice to Cleanse, Disinfect or Purify House.

76 „ 47.—Notice by Urban Authority to remove Pigs, &c.

77 „ „ to remove Stagnant Water.

78 „ „ to abate Nuisance from Overflow of Watercloset, Privy, &c.

Offensive Ditches.

79 Sect. 48.—Information for Foul Ditch.

80 Order of Justices to cleanse Ditch.

81 „ 49.—Notice of Accumulation of Manure by Inspector of Nuisances (Urban).

82 „ 50.—Notice of Periodical Removal of Manure (Urban).

Water Supply.

84 Sect. 52.—Notice to Water Company of Water required.

85 „ 54.—Notice to Owner or Occupier of intention to carry Main through Premises, Land, &c.

85*a* „ 57.—Notice of wasting Water supplied by Local Authority.

86 „ 58.—Agreement to supply Water, by measure or otherwise.

87 Report of Surveyor—House without proper Water Supply.

No.

88 Sect. 62.—Notice to Owner to obtain Water Supply in specified time where such supply can be furnished at a cost not exceeding twopence a week.

PUBLIC HEALTH (WATER) ACT, 1878.

41 & 42 Vict. c. 25.

87*a* Sect. 3.—Report of Officer of Sanitary Authority of Dwelling-House without a supply of Water.

88*a* Notice (form A. in Act) requiring Owner to provide a supply of Water for an occupied House.

88*b* Second Notice (form B. in Act), to be served where requirements of first Notice have not been complied with.

88*c* Notice of application to Justices for an Order to enter to execute Works.

88*d* Notice withdrawing or modifying previous Notice.

88*e* ,, 4.—Memorial to Sanitary Authority, stating objections of Owner.

88*f* Application to Justices for an Order authorizing Authority to proceed with Works.

88*g* Summons of Owner.

88*h* Order.

88*i* ,, 5.—Notice of apportionment of Costs of Water-supply.

88*k* ,, 6.—Certificate of Sanitary Authority.

88*l* ,, 7 and sections 102 and 103 Public Health Act.—Notice of application to Justices for an Order to enter for purposes of Inspection with regard to Water-supply.

88*m* ,, 6.—Information for occupying House without Certificate.

88*n* Summons.

88*o* Order.

88*p* Water Rent Book.

Provisions for Protection of Water, Wells, &c.

89 Sect. 70.—Representation, &c., to Local Authority as to Polluted Wells.

90 Complaint by Local Authority to Justice of the Peace as to Polluted Wells.

91 Summons.

92 Order.

SHAW & SONS, Printers and Publishers,

Common Lodging Houses.

No.	
93	Sect. 76.—Register of Common Lodging Houses, 1 *quire*, 10*s.*; 2 *quires*, 16*s.*
94	Room Ticket.
95	Notice to Register.
95*a*	Application for Registry.
95*b*	Report of Inspector thereon.
95*c*	Notice of House being Registered.
96	„ 78.—Certificate of Registry.
97	Notice to reduce number of Lodgers.
97*a*	Weekly return of ditto.
98	„ 81.—Notice to Keeper of Lodging House to obtain proper supply of Water.
99	„ 83.—Order to report every Person who resorted to Lodging House previous night.
100	Schedules for such Report.
101	„ 84.—Notice to Medical Officer of Fever in Common Lodging House.
102	Notice to Relieving Officer of ditto.
103	„ 86 and 88.—Information for keeping Lodgers in Unregistered House.
105	Summons.
106	Conviction.

Nuisances.

106½	Information to Local Authority of existence of Nuisance.
106 A	Notice to abate Nuisance (General Form—Form A in Act).
107 A	Sects. 91 and 94.—Notice to abate Nuisance. Premises in condition Injurious to Health. This and the following Forms to 113A are variations of Form A in Act.
108 A	Foul Pool, Ditch, Gutter, Watercourse.
109 A	„ Animal kept so as to be a Nuisance.
110 A	„ Accumulation or Deposit which is a Nuisance.
111 A	„ Over-crowding.
112 A	„ Factory, Workshop or Workplace not kept in cleanly state, so as to be injurious to Health.
113 A	„ From Smoke.
114	Sect. 93.—Notice to Local Authority of Nuisance for want of Privy, Drain, &c., by Officer of Authority.

No.

115 Sect. 93.—Notice to Local Authority of Dilapidated and Filthy House, by Officer of Authority.

116 „ „ Foul Drain, Accumulation, by ditto.

117 Notice of Nuisance for want of Privy, Drain, &c., by parties aggrieved.

118 „ Dilapidated Houses, by ditto. (B 5.)

119 „ Foul Drain, Accumulation, by ditto.

120 Sect. 95.—Complaint of existing Nuisance.

121 B Summons (Form B. in Act).

122 C Order of Justices to abate Nuisance (Form C. in Act).

123 Complaint where Nuisance is likely to recur.

123 B Summons, ditto. (Form B in Act).

123 C Order, Nuisance likely to recur (Form C.)

124 C „ Where Nuisance is Removed before Complaint (Form C.)

125 D Order of Justices upon Local Authority to abate Nuisance (Form D. in Act.)

126 D „ with Prohibition where Nuisance is likely to recur.

127 „ 105.—Complaint to Justice of Nuisance by party aggrieved.

Offensive Trades.

128 Sect. 114.—Certificate as to Nuisance from Offensive Trade by Medical Officer of Health, &c., to Urban Authority.

Unsound Meat.

129 Sect. 116.—Information by Medical Officer or Inspectors as to Unwholesome Food.

130 „ 117.—Order of Justices in reference to Unwholesome Food.

131 „ 119.—Complaint to obtain a Search Warrant.

132 Search Warrant.

Infectious Diseases and Hospitals.

133 Sect. 120.—Certificate of Medical Officer as to Cleansing and Disinfecting.

134 Notice to Cleanse and Disinfect.

135 „ 124.—Certificate of person suffering from Infectious Disorder by Medical Practitioners.

No.

136 Sect. 124.—Order of Justices to remove Persons suffering from Infectious Disorder.

137 „ by Local Authority.

138 „ 128.—Certificate of Medical Officer that Premises have been properly Disinfected.

Mortuaries.

(DEATHS FROM INFECTIOUS DISEASES, &c.)

139 Sect. 142.—Certificate of Medical Officer of Death from Infectious Disease.

140 Order of Justices to remove Dead Body and bury the same.

Highways.

141 Sect. 146.—Agreement by Urban Authority with Person to make Road at expense of such Person, such Road, on completion, to be repairable by Inhabitants.

142 „ 147.—Ditto ditto to construct Bridge.

Regulations of Streets and Buildings.

143 Sect. 150.—Notice to Owner or Occupier to Sewer, Level, Pave, &c Private Street (Urban) (Form G. in Sched.).

144 „ 152.—Notice declaring Street to be Highway (Urban).

145 „ 153.—Notice to raise, sink or alter Pipes, &c. (Urban).

Lighting Streets (Urban).

146 Sect. 161.—Contract for supplying Gas, Lighting, &c.

Slaughter Houses (Urban).

147 Sect. 170.—Register of Slaughter Houses Registered.

148 „ „ Licensed.

149 Notice of Non-Registration.

150 Certificate of Registry.

151 Slaughter House License.

152 Notice to Occupier to repair Slaughter House

153 „ to Cleanse.

Contracts.

156 Sect. 173.—Contract and Bond for supply of Goods, *per quire*, 8*s*.

157 Contract for Works, *per quire*, 14*s*.

No.

158 Sect. 174.—Tender for Works, Notice of.

159 ,, 176.—Notice to Owner or Occupier of intention to Purchase Land.

160 Petition to Local Government Board concerning Land intended to be taken.

Arbitration.

161 Sect. 180.—Appointment of Arbitrator (sub-sect. 1).

162 Notice of Appointment of Arbitrator (sub-sect. 4).

163 Appointment of Umpire (sub-sect. 7).

164 Declaration of Arbitration (sub-sect. 10).

Appointment of Officers of Local Authority.

OFFICERS OF URBAN AUTHORITY.

165 Sect. 189.—Medical Officer's Contract.

166 Surveyor's Appointment and Bond.

167 Inspector of Nuisances' Appointment and Contract.

168 ,, 187.—Clerk's Appointment.

169 Treasurer's Bond.

170 Collector's Bond.

OFFICERS OF RURAL SANITARY AUTHORITY.

171 Sect. 190.—Medical Officer's Contract.

172 Surveyor's Appointment and Bond.

173 Inspector of Nuisances' Appointment and Contract.

174 Clerk's Appointment.

175 Treasurer's Bond.

176 Collector's Bond.

Borrowing Powers.

178 Sect. 236.—Mortgage of Rates (Form H in Act).

179 ,, 237.—Register of Mortgages.

180 ,, 238.—Register of Transfer of Mortgages.
Transfer of Mortgage (Form I in Act).

181 ,, 240.—Form of Rentcharge (Form K in Act).

182 ,, 241.—Register of Rentcharges.

SHAW & SONS, Printers and Publishers,

Audit of Accounts.

No.
183 Sect. 247.—Notice of Audit (Sub-sect. 3).

Recovery of Rates.

184 Sect. 256.—Information for non-payment of Rates.
185 Summons.
186 Order for Payment.
187 Warrant of Distress.
187*a* List of Persons whose Rates have been excused.

Appeal.

188 Sect. 268.—Form of Appeal to the Local Government Board.
189 „ 269.—Notice of Appeal to Quarter Sessions.
Recognizance of Appeal.

Alteration of Areas.

190 Sect. 276.—Application to Local Government Board by Rural Sanitary Authority for powers of Urban Sanitary Authority.
191 „ 279.—Application to Local Government Board to be formed into a United District.

Prosecution of Offences and Recovery of Expenses, Penalties, &c.

192 Sects. 102 and 305.—Notice to Owner or Occupier of Application to Justices for an order to enter premises.
193 Application to Justices for order to enter premises.
194 Order of Justices to enter (Form F in Act).
195 Notice of entry upon lands.
196 „ 306.—Information for obstructing any person employed in the execution of the Act.
197 Summons.
198 Conviction.
199 Complaint by Owner for Obstructing the execution of Works.
200 Summons.

No.

201 Sect. 306.—Order of Justices to permit execution of Works by Owner (Form E in Act).

202 Information to recover Costs, Expenses, or Penalties.

203 Summons.

204 Order for Payment.

205 Warrant of Distress.

206 Warrant of Commitment.

207 „ 307.—Information for damaging Works or Property of Local Authority.

208 Summons.

209 Conviction.

Forms under Town Police Clauses Act.

210 Notice of Sale of Stray Cattle.

211 Licenses for Hackney Carriages.

212 Requisition for same.

213 Register of Hackney Carriage Licenses, half-bd.

214 Register Book of Driver's Licenses.

215 License of Driver of Hackney Carriage.

216 Duplicate of ditto.

Driver's Badges.

Hackney Carriage Number and Fare Plates.

Forms under Towns Improvement Clauses Act.

217 Notice to Number Houses.

218 Notice to Remove Projections.

219 Notice to put up Water-spout.

220 Notice of Ruinous Buildings.

221 Notice of intention to take the Site of Buildings.

222 Notice to remove Hoarding.

223 License for Slaughter-House.

224 Notice to remedy or disco tinue use of Fireplace or Furnace not consuming Smoke.

FORMS REQUIRED UNDER THE

PUBLIC HEALTH (INTERMENTS) ACT, 1879.

			s.	d.
Minute Book,	Foolscap, with Index	- - - - - -	25	0
Register of Fees Received and Paid,	2 quires	- - - -	16	0
,,	,,	4 ,, - - - -	25	0
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,,	1,600 ,,	- - - - -	27	6
,,	2,400 ,,	- - - - -	34	0
,,	3,200 ,,	- - - - -	40	0
,,	4,000 ,,	- - - - -	48	0
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Index Book to Registers	- - - - - - - -		18	0
Certificates of Burial,	in books of 50	- - - - -	3	6
Books of Receipts for Fees Paid,	with Counterfoil	- - -	4	6
Form of Grant of Exclusive Right of Burial,	on parchment, with duplicate, each	- - - - - - - - -	1	0
Ditto,	ditto	in books of 50, with duplicates, printed with name of authority, &c., on parchment, bound extra strong -	42	0
Ditto	ditto	in books of 100 - - - -	73	6
Notice to Authority of Intended Interment,	100	- - -	6	0
Ditto, with name of authority printed in		- - - - - -	12	6
Notice to Clergyman to attend Funeral,	in book, 100	- -	2	6
Notice to Sexton to Prepare Grave	- - - - - -		2	6

Fetter Lane and Crane Court, London, E.C.

LIST OF FORMS, &c.

REQUIRED UNDER

THE CANAL BOATS ACT, 1877.

With all the Orders of the Local Government Board relating thereto.

Price 1*s.* 6*d. each.* *In quantities of* 12 *or upwards,* 1*s. each.*

No.

1 Application to Register Boats.
2 Report of Inspector. Form A. in Order.
3 Register of Canal Boats. Form B. in Order.
4 Certificate of Registration.
5 Notice of Disease on Canal Boat.
6 Medical Officer's Certificate that Canal Boat has been Cleansed and Disinfected.

CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.

PART I.—

1 Report to Privy Council as to proceedings of Local Authority on Outbreaks of Pleuro-Pneumonia, Foot-and-Mouth Disease, Sheep-Pox, and Swine-Fever.

PART II.—*Forms for use by an Inspector.*

1 Declaration of Disease.
2 Notice of Declaration to Occupier in Cattle Plague.
3 Ditto ditto Pleuro-Pneumonia.
4 Ditto ditto Foot-and-Mouth Disease.
5 Ditto ditto Sheep-Pox.
6 Ditto ditto Swine-Fever.
7 Ditto to Adjoining Occupier in Cattle Plague.
8 Ditto to Adjoining Occupier of Contiguous Lands in Foot-and-Mouth Disease.

SHAW & SONS, Lithographers and Stationers,

PART III.—*Movement License Forms in connexion with Pleuro-Pneumonia Infected Places and Areas.*

A. Declaration of Owner of Cattle or his Agent.

B. Declaration of Occupier of Farm or Premises or his Agent.

C. Movement of Cattle out of a Pleuro-Pneumonia Infected place to a Slaughter-house. With Indorsement, E.

D. Movement of Cattle out of Pleuro-Pneumonia Infected place for purposes of Feeding, or other ordinary purposes connected with the Breeding of Cattle, or for the purpose of isolation. With Indorsement, E.

F. Movement of Fat Cattle from a Licensed Market, Fair, or other Public Sale or Exhibition, held in a Pleuro-Pneumonia Infected Area to a Slaughter-house. With Indorsement, G.

H. Movement of Fat or Store Cattle from a Sale authorized to be held in a Pleuro-Pneumonia Infected Area without a License. With Indorsement, J.

K. Pleuro-Pneumonia Occcupation Movement License. With Indorsement, L.

M. Movement of Cattle into a Pleuro-Pneumonia Infected Area. With Indorsement, N.

O. Movement of Cattle in Pleuro-Pneumonia Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, R.

P. Movement of Cattle into one out of another Pleuro-Pneumonia Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, R.

Q. Movement of Cattle out of a Pleuro-Pneumonia Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, R.

PART IV.—*Movement License Forms in connexion with Foot-and-Mouth Disease Infected Places and Areas.*

T. Declaration of Occupier of Farm or Premises, or his Agent.

U. Movement of Animals out of a Foot-and-Mouth Disease Infected place to a Slaughter-house. With Indorsement, W.

V. Movement of Animals out of Foot-and-Mouth Disease Infected place for purposes of Feeding or other ordinary purposes connected with the Breeding of Animals, or for the purpose of Isolation. With Indorsement, W.

X. Movement of Fat Animals from a Licensed Market, Fair, or other Public Sale or Exhibition, held in a Foot-and-Mouth Disease Infected Area, to a Slaughter-house. With Indorsement, Y.

Z. Movement of Fat or Store Animals from a Sale authorized to be held in a Foot-and-Mouth Disease Infected Area without a License. With Indorsement, AA.

BB. Foot-and-Mouth Disease Occupation Movement License. With Indorsement, CC.

DD. Movement of Animals into a Foot-and-Mouth Disease Infected Area. With Indorsement, EE.

FF. Movement of Animals in Foot-and-Mouth Disease Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, JJ.

HH. Movement of Animals out of a Foot-and-Mouth Disease Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, JJ.

Dairies, Cowsheds, and Milkshops Order,

Dated 4th February, 1878.

No.

1 Public Notice of Time when Register of Dairies, &c., will be Open (Placard) 5*s. per quire.*

2 Ditto ditto in Circular Form, 4*s. per quire.*

3 Application by Dairyman, &c., to Register, 3*s. per quire.*

4 Register of Cowkeepers, Dairymen, and Purveyors of Milk, under the above Order, in Books, 1 quire half-bound, 7*s.* 6*d.*

Ditto ditto 2 quires half-bound, 10*s.* 6*d.*

5 Certificate of Registration.

The Swine-Fever Order.

PART V.—*Movement License Forms in connexion with Swine-Fever Infected Places and Areas.*

LL. Declaration of Occupier of Farm or Premises or his Agent.

MM. Movement of Swine out of a Swine-Fever Infected Place to a Slaughter-house. With Indorsement, NN.

SHAW & SONS, Printers and Publishers,

OO. Movement of Fat Swine from a Licensed Market, Fair, or other Public Sale or Exhibition, held in a Swine-Fever Infected Area to a Slaughter-house. With Indorsement, PP.

QQ. Movement of Fat or Store Swine from a Sale authorized to be held in a Swine-Fever Infected Area to a Slaughter-house. With Indorsement RR.

SS. Swine-Fever Occupation Movement License. With Indorsement, TT.

UU. Movement of Swine into a Swine-Fever Infected Area. With Indorsement, VV.

WW. Movement of Swine in Swine-Fever Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, ZZ.

XX. Movement of Swine into one out of another Swine Fever Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, ZZ.

YY. Movement of Swine out of a Swine-Fever Infected Area from a place other than a Market, Fair, Exhibition, or Sale. With Indorsement, ZZ.

PART VI.—*Inspector's Movement License Forms to be used in connexion with Animals, Horses, Asses, and Mules seized by them in Market, &c., or during transit.*

BBB. Movement to a Slaughter-house of Animals seized as having been found affected with Foot-and-Mouth Disease in a Market, Railway Station, Grazing Park, or other like place, or during Transit.

CCC. Movement to a Slaughter-house of Swine seized as having been found affected with Swine-Fever in Market, Railway Station, Grazing Park, or other like place, or during Transit.

DDD. Movement to a Slaughter-house, or Horse Slaughterer's or Knacker's Yard of Infected Animals, Horses, Asses, or Mules that have been seized in consequence of being illegally moved or exposed.

FORM OF RECORD.—PART I., in Books, half-bound, 10*s.* 6*d.*

FORM OF RECORD.—PART II. ditto.

Magisterial Forms.

Price 3s. per quire.

13 Information for Offence.

14 Summons.

15 Conviction.

16 „ (Imprisonment).

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PRATT'S LAW OF HIGHWAYS, comprising the Highway Acts, 1835, 1862, 1864, the South Wales Highway Acts, and other Statutes, including an Introduction, Explanatory of the Law upon the Subject; with Notes, Cases, and Index; also, The Tramways Act, 1870. Twelfth Edition. By S. PRENTICE, Esq., Q.C. Price 20*s.*

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No.		*s.*	*d.*
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1*a*	„ „ Foolscap, 5 quires „ - - -	21	0
1*b*	Rough Minute Book. 3 quires, half bound - - -	8	6
2	Ledger (Form A.) Demy, 5 quires, full rough calf - -	26	0
2*a*	Rough Ledger. 2 quires, half bound - - - -	9	6
3	Parochial Ledger, (see Circular Letter of Local Government Board) - - - - - - - - - -	26	0
4	Order Check Book (Form B.), in books of 100 each - -	4	0
5	Petty Cash Book - - - - - - - - -	6	0
6	Cheque Book on Treasurer, with name of board printed in to order - - - - - - - - - -		

Highway Board Forms.

1	Notice to Surveyor of his Election - - - - -
1*a*	„ Waywarden „ - - - - -
2	Request from Clerk to Overseers to transmit name of person appointed Waywarden - - - - - - - -
3	Requisition for an Extraordinary Meeting of Board - -
4	Notice of „ „ „ - -
11*a*	Precept upon Waywarden, Books of 50 each - - -
	„ Overseers, ditto - - -

SHAW & SONS, Printers and Publishers,

Highway Boards Books and Forms.

Treasurers' Books.

No.		s.	d.
6a	Treasurers' Bond - - - - - - - - -		
7	Treasurers' Receipt and Payment Books (Form C.) foolscap folio - - - - - - - -	8	0
8	Treasurers' Pass Book - - - - - - - -	3	6

District Surveyor.

9	Cash Book (Form D.) Half bound - - - - -	14	0
10	Petty Cash Book „ - - - - - -	6	0
11	Contract Book (Form E.) „ - - - - - -	7	6
12	Wages Book (Form F.) 2 quires, half bound - - -	10	0
	„ „ 1 quire, limp - - - - -	7	0
	„ „ ½ „ - - - - -	4	6
	„ „ 8 sheets, cloth - - - -	2	0
12a	Wages Book for Fortnightly Payments, foolscap folio, 1 quire - - - - - - - - - -	7	0

A separate Wages Book is required for each parish, see Circular Letter of Local Government Board.

13	Receipt Cheque Book (Form G.) - - - - -	2	0
14	Stock and Stores Account (Form H.) „ - - -	10	0

Financial Statements.

15	Financial Statement (Form I.), per quire - - - -	5	0
15a	Ditto, in books, 2 quires - - - - - - -	12	0
16	Loan Account (Form K.), per quire - - - - -	5	0
16a	Ditto, in books, 2 quires - - - - - - -	12	0
17	Parochial Statement (Form L.), sufficient for 25 Parishes, per quire - - - - - - - - -	4	0
	Ditto ditto sufficient for 60 Parishes, per quire - -	6	0
17a	Ditto, in books, 2 quires - - - - - - -	12	0
18	Clerks' Notice of Audit, per quire - - - - -	2	0

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HIGHWAY PARISHES IN HIGHWAY DISTRICTS.

GENERAL ORDER OF THE LOCAL GOVERNMENT BOARD,

Dated 10th May, 1883.

FORM A.—The Highway Rate and Rate Collection Account Book,

15 Lines on a Page.

				s.	d.
6 sheets,	150 names,	Circuit Binding	- - - - - -	2	0
12 „	330 „	„	- - - - - -	2	3
1 quire	650 „	„	- - - - - -	3	0
„	„ „	Half-bound	- - - - - -	3	6
1½ „	975 „	Circuit Binding	- - - - - -	3	8
„	„ „	Half-bound	- - - - - -	4	2
2 quires	1,330 „	Circuit Binding	- - - - - -	4	3
„	„ „	Half-bound	- - - - - -	4	9
3 „	2,000 „	Circuit Binding	- - - - - -	5	6
„	„ „	Half-bound	- - - - - -	6	0

Ditto, 36 Lines on a Page.

1 quire,	1,728 names,	half bound	- - - - - -	8	0
2 quires,	3,456 „	„	- - - - - -	12	0
3 „	5,184 „	„	- - - - - -	16	0

FORM B.—Highway Rate Receipt Book.

Books of	50 each	- - - - - - - - - -	
„	100 „	- - - - - - - - - -	1 2
„	150 „	- - - - - - - - - -	1 7
„	200 „	- - - - - - - - - -	2 0
„	300 „	- - - - - - - - - -	3 6
„	400 „	- - - - - - - - - -	4 6
„	500 „	- - - - - - - - - -	5 3
„	600 „	- - - - - - - - - -	6 10

FORM C.—Receipt and Expenditure Account.

In Books - - - - - - - - - - -

In Quires, loose - - - - - - - - - -

FORM D.—Financial Statement.

In Books - - - - - - - - - - -

In Quires, loose - - - - - - - - - -

SHAW & SONS, Lithographers and Stationers,

HIGHWAY PARISHES.

Order for Accounts,

Dated 10th May, 1883.

FORM A.—The Highway Rate and Rate Collection Account Book.

15 Lines on a Page.

				s.	d.
6 sheets.	150 names,	Circuit Binding	- - - - - -	2	0
12 „	330 „	„	- - - - - -	2	3
18 „	495 „	„	- - - - - -	2	8
1 quire	650 „	„	- - - - - -	3	0
„	„ „	Half-bound	- - - - - -	3	6
1½ „	975 „	Circuit Binding	- - - - - -	3	8
„	„ „	Half-bound	- - - - - -	4	2
2 quires,	1,330 „	Circuit Binding	- - - - - -	4	3
„	„ „	Half-bound	- - - - - -	4	9
3 „	2,000 „	Circuit Binding	- - - - - -	5	6
„	„ „	Half-bound	- - - - - -	6	0

Ditto, 36 Lines on a Page.

1 quire,	1,728 names,	Half-bound	- - - - - -	8	0
2 quires,	3,456 „	„	- - - - - -	12	0
3 „	5,184 „	„	- - - - - -	16	0

FORM B.—Highway Rate Receipt Book.

Books of	50 each	- - - - - - - - - -			
„	100 „	- - - - - - - - - -	1	2	
„	150 „	- - - - - - - - - -	1	8	
„	200 „	- - - - - - - - - -	2	0	
„	250 „	- - - - - - - - - -	2	9	
„	300 „	- - - - - - - - - -	3	6	
„	400 „	- - - - - - - - - -	4	6	
„	500 „	- - - - - - - - - -	5	3	

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Ditto ditto ditto 100 ditto, 4s.

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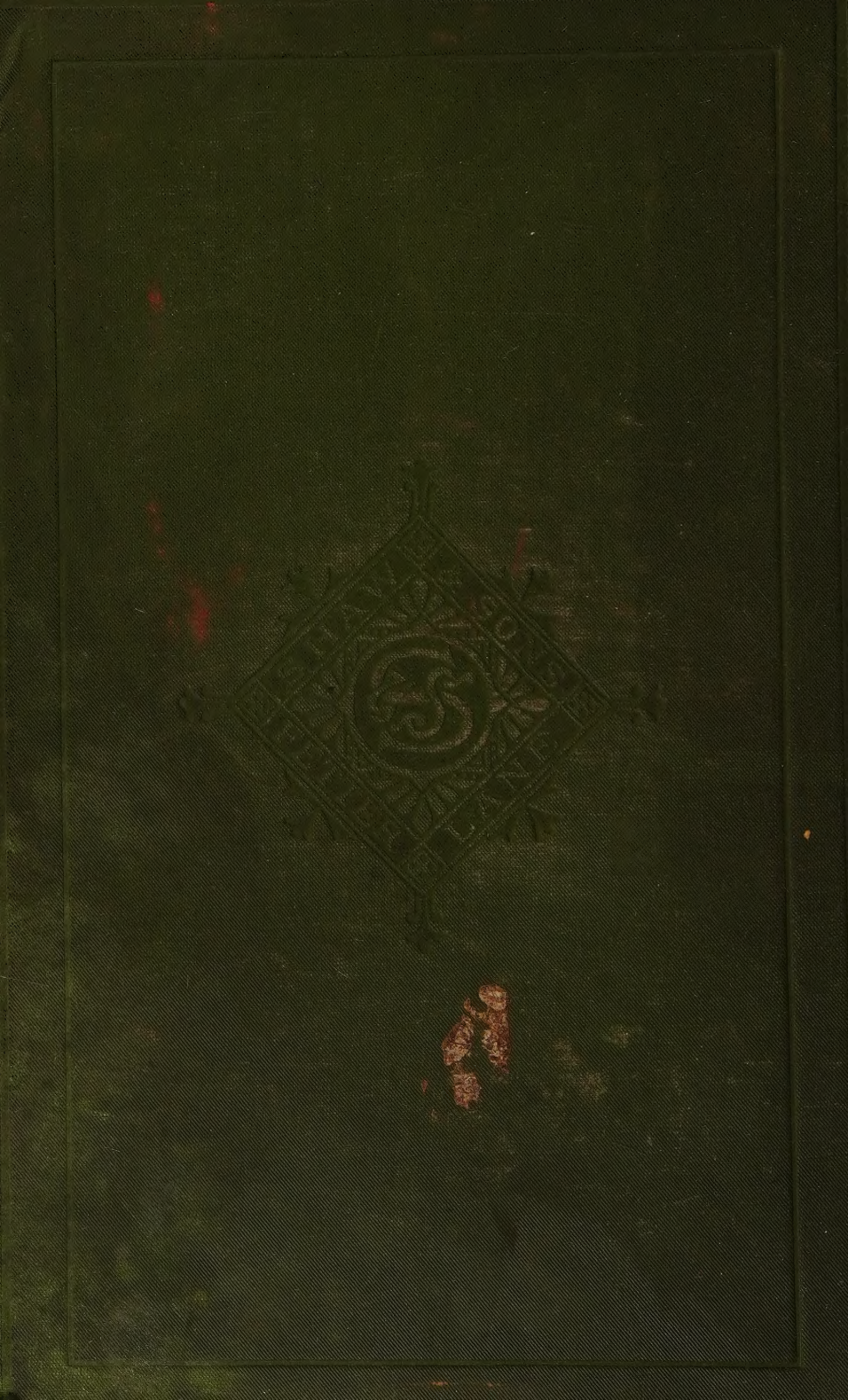
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